



Human Rights, Persons with Disabilities, ICF and the UN Convention on the rights of persons with disabilities

Training toolkit

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¹ **Training Manual on the Human Rights of Persons with Disabilities**. Edited by Giampiero Griffo and Francesca Ortali. Ulan Baatar (Mongolia), 2007. It is possible to download the manual on the web site: www.un.org/disabilities/default.asp?id=30. More information on the project on the AIFO web site: www.aifo.it

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This deliverable, included in the project list with the number D37, is composed by two major sections:

The first section, developed by the 'Consiglio Nazionale sulla Disabilità has as key aim, to develop some knowledge about a human rights based approach to disability.

The second section contains two documents prepared as separate deliverables:

- D17 Report on ICF and International Human Rights
- D18 Report on Social Justice, Persons with disabilities and ICF

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Training package on human rights of persons with disabilities, Consiglio Nazionale sulla disabilità

I. Acronyms

| | |
|-------------|---|
| AHC | Ad Hoc Committee |
| AIFO | Associazione Italiana Amici di Raoul Follereau |
| ASEAN | Association of Southeast Asian Nations |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CBR | Community Based Rehabilitation |
| CoE | Council of Europe |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| DHRW | Disability human rights watch |
| DPI | Disabled Peoples' International |
| DPO | Disabled People Organization |
| ESC/ ECOSOC | Economic and Social Council (United Nations) |
| HRC | Human Rights Council (2006) |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Elimination of All forms of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICF | International Classification of functioning, disability and health |
| ICJ | International Court of Justice (1945) |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| IE | Inclusive Education |
| ILO | International Labour Organisation |
| MDGs | Millennium development goals |
| NGO | Non-Governmental Organization |
| OAS | Organization of American States |
| OHCHR | Office of the High Commissioner for Human Rights |

| | |
|--------------|---|
| PHC..... | Primary Health Care |
| PRSP | Poverty Reduction Strategy Paper |
| PwD | Persons with disabilities |
| RUDs | Reservations, Understandings and Declarations |
| SC..... | Security Council (United Nations) |
| UN..... | United Nations |
| UN GA..... | United Nations General Assembly |
| UNCHR..... | United Nations Commission on human rights |
| UNDESA | United Nations Department of Economic and Social Affairs |
| UNDP | United Nations Development Programme |
| UNESCO..... | United Nations Educational, Scientific and cultural orga- nisation |
| UNHCR..... | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |
| WHO | World Health Organization |

II. Introduction

MURINET is a European Research Project aimed at changing the approach to disability and promoting a new model to develop health and social policies in Europe.

The Consiglio Nazionale sulla Disabilità (CND) is a partner of this European project that formed an European pool of experts in health and disability research and management, able to combine several multidisciplinary skills within the framework of ICF model (WHO's International Classification of Functioning, Disability and Health).

MURINET linked different operational sectors and build up a multidisciplinary and intersectorial approach to health and disability research and management, joining all the involved stakeholders, from policy makers to clinical professionals, from education to rehabilitation. The ICF model, which is MURINET's framework, embodies the principles of full participation, mainstreaming disability and the universality of disability. It has been developed in close partnership with an NGO representing persons with disability (PwD).

In the last four years the MURINET Researchers attended several training programme and in parallel with the training courses they developed and collaborated in research projects close linked with the whole MURINET Project in the different guest centres.

CND, in the MURINET framework of the training activities, provides specific training courses related to the issue "Person with Disabilities, Human Rights and Policies. A new cultural framework".

These courses were taught, in the years 2007, 2008, 2009, by teachers from University of Padua – Human Rights Centre, Disabled people organizations Italian Leaders active at a National and International level; other Experts selected by CND having an academic and professional background coherent with the Disability Movement guidelines.

The main objectives were to overcome the Human Rights knowledge and raise disability awareness in the Murinet's researchers coming from the more different academic areas and professional experiences.

Moreover the opportunity to deal directly with the persons with disabilities, as teachers and experts, aimed to give the researchers the opportunity to learn from the disability movement and understand the full meaning of the slogan "Nothing about us without us".

The previous training courses and the current Training Manual were focused on a model of disability based on human rights approach which was introduced by the UN Convention on the Rights of People with Disabilities. Respect for inherent dignity, defence of human rights and transformation of policies and legislation, are key aspects for this economic, social and cultural approach on the condition of persons with disabilities.

The training manual is a contribution for researchers in the field of disability, stressing that the ICF and the CRPD must be used in conjunction to develop a better understanding of the condition of persons with disabilities.

III. Key Concepts of this Training toolkit: Glossary

Accessibility and universal design

To offer equal opportunities it is necessary to remove barriers and obstacles that hinder full participation in society. Accessibility means that all people must have access to the “various systems of society and the environment, such as services, activities, information and documentation” (Standard Rules). Since disability belongs to the entire human race, society must design and plan all its activities and policies with the aim of including all citizens.

The “universal design” approach allows the characteristics of all people in a community and nation to be taken into account. Universal design “means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. ‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed” (Art. 2).

Advocacy

Individual and social Empowerment action. Activity towards persons with disabilities and their organizations in order to inform, orient and support their rights.

Civil Society

This term has various definitions. This manual used the term to refer in general to non-governmental organisations and institution, representing persons with disabilities.

Committee on Rights of People with Disabilities

It is the body established by the Convention whose task is to monitor and evaluate the Convention at international level. It will take into consideration reports coming from ratifying States regarding the implementations of the Convention, having jurisdiction to consider accusation of Convention violations.

Community Based Rehabilitation - CBR

Community-based rehabilitation (CBR), currently in practice in more

than 90 countries around the world, is a comprehensive strategy for involving people with disabilities in the development of their communities.

CBR seeks to ensure that people with disabilities have equal access to rehabilitation and other services and opportunities - health, education and income - as do all other members of society. CBR is a human right strategy for local and inclusive development.

Convention on the rights of persons with disabilities

International legally binding agreement with the purpose to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The UN General Assembly adopted the final text of the Convention in 13/12/2006, and it opens for signature on 30/03/2007.

Disability

Disability is a social relationship between personal characteristics and the extent to which society is able to take them into account.

Disability is not a subjective or personal condition, but depends on environmental, social and individual factors, as the WHO's ICF underlines.

Disability is a condition that every person goes through over the course of their life (as a child, in old age and in various other situations) and which belongs to all humankind. Disability is an evolving concept that needs to be considered in connection with the cultural and material conditions of each country (see Preamble Point e). It is important to link this concept to the definition of persons with disabilities in the Convention (Art. 1).

Discrimination based on disability

Means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Empowerment

The capacity to influence the forces which affect one's life for one's

own and others'. For persons with disabilities empowerment activities, in individual and social field, are essential to increase personal awareness, self-esteem and to overcome processes of social impoverishment.

Entry into force

When a treaty has received the requisite number of ratification by countries, the treaty will enter into force for those countries. This means it becomes legally binding upon those countries. The Convention on the Rights of Persons with disabilities will come into force one month after 20 ratifications have been deposited.

Equal opportunity

Being excluded and segregated, persons with disabilities do not have the same opportunity to choose as other people. Equal opportunity, according to the Standard Rules, means that "the needs of each and every individual are equally important" and "that those needs must be made the basis for the planning of societies" and thus "all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation" in society.

General Assembly

It is the main deliberative body of United Nations, most adapted to elaboration of general norms and standards for member State conduct. Each State member of United Nations is represented to General Assembly works and each State member of United Nations has a decision vote in the General Assembly resolutions.

Human diversity

The condition of disability is an experience that all human beings have lived, live and will live through. It is therefore important to consider disability as one of the features of human diversity. The history of negative cultural views and of the treatment that some characteristics of human beings have undergone over the centuries has given people with disabilities a social stigma, loading these characteristics (and therefore all the people who possess them) with social undesirability. It is therefore important to include disability as one of the many differences that distinguish human beings, placing disability among the ordinary characteristics of human beings and removing social stigma.

Human Rights

Rights owned by any person as human person. All human persons are entitled to enjoy all rights just because they belong to humankind

Human Rights-Based Approach

The human rights approach is a cultural revolution in the reading of the condition of people with disabilities. This change in perspective is a conceptual system that reconstructs the relationship between people's characteristics and the ways in which society permits or limits their access to rights, goods and services and allows or impedes their full participation in the life of the society. This new view is based on some essential concepts that transform the actions and perceptions of governments and members of society regarding people with disabilities.

ICF (International Classification of functioning disability and health)

Cultural and scientific frame of reference at international level on disabled person's condition. Approved by WHO in 2001.

Implementation

Legal and political activity of ratifying States in order to implement the legal obligations foreseen by the Convention.

Inclusive development

Economic development theories consider the creation of a group of people who are excluded from the benefits of development to be a necessary consequence of this development. Development mechanisms are in fact often tied to conditions of disadvantage and unequal opportunities created by society itself. In the case of people with disabilities these conditions are found to be caused by mechanisms of discrimination and social exclusion that the United Nations Convention has made clear. On this basis the necessity arises for inclusive development that does not produce mechanisms of social and economic impoverishment but ensures respect for the human rights of all citizens.

Independent Living

It is a Movement and a philosophy enhancing the control on every day life and freedom of choices that the persons with disabilities have to have in life as any other persons. For this reason they ask solutions and services enabling persons with any kind of limitation to live

autonomous, self determined, independent and interdependent life. The obstacles and barriers, differential treatment and negative views concerning people with disabilities, particularly those who cannot represent themselves or require complex assistance, have in the past led to such people being institutionalized. In reality, these people have the same human rights as everyone else and must be supported in their acquisition of autonomy, self-determination, independence and interdependence. It was for this reason that the independent living movement arose, first in the United States of America at the end of the 1960s, and then throughout the world, through its own philosophy and appropriate solutions, such as centres for independent living and personal assistants.

International Bill of Human Rights

The combination of these three documents: the Universal declaration of Human Rights (UDHR), the International covenant on civil and political rights, and the International covenant on economic, social and cultural rights.

Mainstreaming

Mainstreaming is the main flow of a river. The idea is to change disability policies from special subordinate policies, (as a river tributary) to ordinary policies, for all. Mainstreaming policies intervene to safeguard rights and promote equal opportunities for people with disabilities inside ordinary policies and legislation, utilizing funds allocated to all citizens.

Millennium development Goals

United Nations global initiative to promote poverty eradication all over the world within 2015.

Monitoring

Systematic and periodic activities to control the level of application and implementation done by ratifying States regarding the obligations legally undertaken inside the Convention.

Multidiscrimination or Multiple discrimination

Discrimination affects people on the basis of characteristics that are subject to differential treatment, prejudice and obstacles and barriers to full participation in society. When features of gender, race, culture, reli-

gion, political opinions, age, and disability combine, multiple discriminations are produced, it makes the persons concerned more vulnerable. A typical example is women with disabilities, whose access to rights, goods, services and participation in society can be severely limited.

Non-discrimination

The medical model of disability has brought about differential approaches and treatment compared with other people, thus developing solutions and actions that impoverish people with disabilities and cause continual violations of human rights. Indeed, all unjustified differential treatment is a violation of human rights. "Persons with disabilities [...] have the right to remain within their local communities" and to "receive the support they need within the ordinary structures of education, health, employment and social services" (Standard Rules). In order to combat the former situation, anti-discrimination legislation has been created, which includes the protection of people with disabilities, prohibiting any discrimination based on disability through a legal basis that provides for the removal of discriminatory conditions using "reasonable accommodation" (Art. 5). Anti-discrimination legislation has been introduced by some countries at the national level (the United States of America, Australia, New Zealand, Canada, the United Kingdom) and by the European Communities at the regional level.

Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR), a department of the United Nations Secretariat, is mandated to promote and protect the enjoyment and full realization, by all people, of all human rights established in the Charter of the United Nations and in international human rights laws and treaties.

Optional Protocol

A separate agreement that covers only a certain aspect of the Convention. For example, Convention on the Rights of Persons with Disabilities has an Optional Protocol that gives the monitoring body the power to hear individual complaints of violations of civil, political, social economic and cultural rights as articulated in the Convention. Optional Protocols must be separately signed and ratified by each State Party. Optional protocol entry in force when 10 countries will ratify it.

Participation

The construction of inclusive societies implies that the people included are protagonists in the process of inclusion, as experts on the way in which society must treat them. This means that people with disabilities must be present with the same opportunities as other members of society in decisions making on all policies, action and plans that concern them. Therefore, the participation of people with disabilities and organizations that represent them is a necessary methodology/action, based on the slogan/right "Nothing about us without us".

Peer counselling

Activity through which, trained and socially included disabled persons acting as peer counsellors, can support a process of awareness, personal growth, and capacity building for other people with disabilities.

Established in USA, peer counselling spread all over the world adapting to different cultures and situations. Many organisations of disabled persons developed expertise in this field, producing books and manuals.

Persons with disabilities

International term to define persons with impairment who, due to attitudinal /environmental barriers, live limitations to their full and effective participation to society on an equal base with others.

Poverty Reduction Strategy Papers - PRSP

Poverty Reduction Strategy Papers are in many ways the replacement for Structural Adjustment Programs, and are documents required by the International Monetary Fund and World Bank before a country can be considered for debt relief. Poverty Reduction Strategy Papers (PRSP) are prepared by the member countries through a participatory process involving domestic stakeholders as well as external development partners, including the World Bank and International Monetary Fund.

Ratification

Formal procedure by which a country becomes bound to a treaty. Process through which a State decide to introduce a Convention in its legal system.

The ratification process procedures are: signature, Convention consistency versus national legal system, final approval of the law introduced into national legal system. The ratification tool is generally examined by Convention secretary and deposited care off United Nation General Secretary.

Reasonable accomodation

Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Reservations, Understandings and Declarations

The acronym RUDs can be used to avoid subscription of parts of a Convention or to describe the interpretation of special languages. RUDs are presented by a country along with the ratification instrument.

Social impoverishment and empowerment

Disability is a cause and an effect of poverty. The differential treatment that people with disabilities undergo has produced a social impoverishment in access to rights, goods and services that combines and often multiplies with economic poverty in a negative cycle that leads to social exclusion. For this reason, people with disabilities represent almost half the world's poor, given that more than 80% of these people live in developing countries (Preamble Point t). In order to break this vicious circle it is necessary to act both by changing society's approach to people with disabilities and by working with these people for individual and social empowerment. The United Nations global initiative against poverty, the Millennium Development Goals, should focus on people with disabilities as a priority.

Social inclusion

Action supporting equal opportunities without any discrimination. In order to transform a society that excludes and discriminates, it is necessary to aim for the construction of inclusive societies, in which everyone can participate and contribute to the development of society. The path from exclusion to integration produces a presence in society of people with disabilities who adapt to rules that have already been established by the community that receives them. Inclusion, meanwhile, is a process that provides for the people included to have the same opportunities and decision-making powers on how to organize society as others.

Inclusion is a right based on the full participation of people with disabilities in all aspects of life, on an equal footing with others, without discrimination, respecting dignity and valuing human diversity, through appropriate action: overcoming of obstacles and prejudices and support

based on mainstreaming in order to live in local communities.

SWOT analysis

SWOT is an abbreviation for Strengths, Weaknesses, Opportunities and Threats. SWOT analysis is an important tool for auditing the overall strategic position of a business and its environment.

Treaties

Formal agreement between States that defines and modifies their mutual duties and obligations; used synonymously with Convention.

Treaty Monitoring Institutions

Experts Committee charged to supervise and monitor a Convention implementation. Usually a Convention indicates the criteria for choosing members, when and where to meet and the monitoring power to adopt.

Twin track approach

Definition utilized in International co-operation field indicating two action tracks in which operate: increasing the resources allocated by international co-operation addressed to persons with disabilities and including disability in every co-operation project.

United Nations

Intergovernmental States organisation set up in 1945. The main premises are based in New York and Geneva. The UN Charter (International Convention funding the UN) states that UN objectives are: to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.

Universal Design

Means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed. (See Accessibility and universal design)

IV. Human rights and Disability Timeline

| | |
|-----------|--|
| 1945 | Charter of the United Nations |
| 1948 | American Declaration of rights and duties of man - Act XI, XVI |
| 1948 | Universal Declaration of Human Rights |
| 1949 | Geneva Conventions: Treatment of Prisoners of war Protection of civilian persons in time of war |
| 1950 | Council of Europe: Convention on Protection of Human Rights and Fundamental Freedoms |
| 1955 | ILO Recommendation 99: Vocational Rehabilitation of Disabled |
| 1960 | UNESCO Convention discrimination in education |
| 1961 | European Social Charter: 'The rights of physically/mentally disabled persons to vocational training, rehabilitation and social resettlement |
| 1965 - 69 | Convention on the elimination of all forms of Racial discrimination |
| 1966 - 76 | International Covenant on Civil and Political Rights Protocol I on individual complaints (66-76) Protocol II on abolition of death penalty (89-91) |
| 1966 - 76 | International Covenant on Economic, social and cultural rights |
| 1969 | General Assembly Economic and Social Council: Declaration on social progress and development |
| 1971 | UN Resolution on Rights of mentally retarded persons |
| 1973 | Rehabilitation Act - section 504 (USA) |
| 1974 | Resolution 3318 (XXIX) General Assembly: Declaration on Protection of women and children in emergency and armed conflict |
| 1975 | UN Resolution on Rights of disabled persons |
| 1978 | Declaration of Alma-Ata |
| 1979 - 81 | Convention on the elimination of all forms of Discrimination against women - Protocol on individual complaints (99-2000) |
| 1979 - 81 | UN Resolution on Rights of deaf-blind persons |

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|----------------|--|
| 1981..... | African Charter on human and people's rights - special measures of protection to aged and disabled |
| 1981..... | International year of disabled persons |
| 1982..... | Principles of Medical ethics relevant to the role of health personnel, particularly physicians, in protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment |
| 1982..... | World programme of action concerning disabled persons |
| 1983..... | ILO Convention n. 159; Recommendation 168: Vocational rehabilitation of disabled persons |
| 1983 - 92..... | UN Decade of disabled persons |
| 1984..... | Convention against Torture & other cruel, inhuman/degrading treatment/ punishment - Protocol on prevention of torture (2002-06) |
| 1986..... | Council of Europe Communities - Recommendation on employment of disabled persons in EC |
| 1988..... | Additional protocol - American Convention on Human Rights, Art. 18 Special protection of disabled persons |
| 1988..... | Body of principles for the protection of All persons under any form of detention or imprisonment |
| 1989 - 90..... | Convention on the Rights of child Optional protocol on sale, child prostitution ad pornography (2000-02) Optional protocol on child soldiers (2000-02) |
| 1990..... | Americans with disabilities act - section 102: problematic definition sec. 3 (USA) |
| 1990 - 03..... | International Convention on the protection of the Rights of migrant workers & members of families |
| 1991..... | Principles for the protection of persons with mental illness and the improvement of mental care |
| 1992..... | UN Conference on Environment, Rio, June |
| 1993..... | UN Standard rules on equalization of opportunities for PwD |
| 1993..... | Vienna Declaration of Human Rights |
| 1993..... | World Conference on Human Rights, Vienna, June |
| 1994..... | Committee on Economic, Social and Cultural Rights, General Comment No. 5, Persons with disabilities |
| 1994..... | International conference on population and development, Cairo, September |

| | |
|----------------|---|
| 1994..... | Salamanca Statement (Education) |
| 1994..... | UN Declaration on the Elimination of Violence against Women |
| 1994..... | WHO Declaration on the promotion of patients' rights in Europe |
| 1995..... | 4th world conference on women |
| 1995..... | World Summit for social development |
| 1996..... | Equality of opportunities for PwD: new community disability strategy (rights of PwD, equal opportunities, Non-discrimination) |
| 1996..... | European social charter revision |
| 1996..... | Habitat II |
| 1996..... | EU Resolution on equality of opportunities for PwD (empowering, mainstreaming disability, removing barriers, nurturing public opinion, nothing about us without us) |
| 1997..... | Amsterdam treaty |
| 1997..... | European Convention on Human Rights and Biomedicine |
| 1997..... | Universal Declaration on the Human Genome and Human Rights |
| 1999..... | European social dialogue, joint declaration |
| 1999..... | UNESCO Declaration of the world conference on Science |
| 2000..... | Charter of fundamental rights of European Union, Nice |
| 2000..... | UN Committee on Economic, Social, and Cultural Rights General comment n.14 on the right to health |
| 2002..... | Madrid declaration |
| 2003..... | European year of PwD |
| 2004-2010..... | EU Action Plan on Disability |
| 2006..... | UN Convention rights of PwD - Optional protocol on individual complaints |
| 2007..... | Convention for the protection of all persons from enforced disappearance |
| 2010-2020..... | EC Strategy on Disability |

V. Introduction to Human Rights

The history of the concept of “human rights” reveals its historical evolution and political and social use from the Second World War until the Universal Declaration of Human Rights (1948). Since then the international instruments protecting human rights have broadened and developed, including at the regional level. The universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms are universally accepted. Disability is a new area of action in the protection of human rights.

The human rights context at the level of the continent and national culture Declarations and conventions have multiplied, affecting different cultures and institutions and various continents (Europe, the Americas, Africa, the Middle East and North Africa region, Asia and the Pacific region).

The basis for the protection of human rights: cultural, political and legal motivations

Protection of people at risk of human rights violations

Protection mechanisms derive from the realization that discrimination and human rights violations affect various specific groups, which the United Nations have recognized as women, immigrants, children and people with disabilities.

Development of standards for an equitable treatment of people

The United Nations international Convention has become a leading human rights protection mechanism, with a corpus of norms and sentences representing the evolution of international law produced by national and international courts.

Development of a universal human rights protection system

The international human rights system has been evolving and spreading to the various continents (e.g. international and regional legal mechanisms and special courts of justice). International bodies exist to control and monitor the application of the norms of the various conventions.

VI. The United Nations Human Rights system

Brief history of the United Nations and its structure

The United Nations was formed in 1946 and is based on three pillars:

- **United Nations General Assembly**, currently made up of 191 countries;
- **Security Council**, made up of five countries with the right of veto (China, France, the United Kingdom, Russia and the United States of America) and 10 other countries in rotation; and
- **Economic and Social Council** which involves different regional offices and various responsibilities.

Over time the United Nations agencies have been created, each with specific responsibilities (which will be presented later in this publication):

- **International Labour Organization (ILO)**, established in 1919;
- **United Nations Educational, Scientific and Cultural Organization (UNESCO)**, established in 1945;
- **United Nations International Children's Emergency Fund (UNICEF)**, established in 1946; and
- **World Health Organization (WHO)**, established in 1948.

Other relevant regional institutions

The regional institutions that either have responsibility for human rights or have approved documents in this field are the European Communities, Council of Europe, Organization of American States, League of Arab States, Organization of African Unity/African Union and Association of Southeast Asian Nations (ASEAN).

The United Nations Conventions

There are eight UN treaties on human rights:

1. Convention on the Elimination of All Forms of Racial Discrimination (1965)
2. International Covenant on Civil and Political Rights (1966)
3. International Covenant on Economic, Social and Cultural Rights (1966)

4. Convention on the Elimination of All Forms of Discrimination against Women (1979)
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
6. Convention on the Rights of the Child (1989)
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
8. United Nations Convention on the Rights of Persons with Disabilities (2006)

The motivations for a convention on human rights

The conventions came about because of the documentation of human rights violations, against people with certain characteristics, who were the object of social stigma. Awareness of the need for international human rights protection mechanisms became clear after the Second World War, when the horrors of the Nazi regime against people with disabilities (through the T4 Program), the Romani people and the Jews became well-known. At that time the United Nations approved the Universal Declaration of Human Rights (1948), which in 30 articles lays out the set of human rights requiring protection.

The report 'Human Rights & Disability' (2002), commissioned by *United Nations Office of the High Commissioner for Human Rights* of Geneva, and made by the professors Gerard Quinn from the *Research Centre on Human Rights and Disability* dell'University of Galway, in Ireland, and Theresia Degener, from the Bochum University, had stressed that in the reports of the States Parties on all UN Human Rights conventions, very low references on persons with disabilities was included. See http://unipd-centrodirittiumani.it/it/diritti_umani_disabili/Human-rights-and-disability-the-current-use-and-future-potential-of-United-Nations-human-rights-instruments-in-the-context-of-disability/76

Value, meaning and implications of a convention on human rights

The approval of a convention on human rights is an important moment

of political and social recognition of the will to protect the rights of the segment of population concerned. This means that it puts a new issue on the global and national agenda, creating the conditions to change policies and legislation. Thus, the first effect regards governments, parliaments and national and local institutions.

A convention commits ratifying states to respect its norms within the national legislation and policies. The important aspect to clarify is the effect that the norms have on the country that has ratified the convention and open up forms of comparison with the relevant governments and institutions.

United Nations conventions are the most binding legislation, overriding, in the case of disputes over interpretation, all other forms of legislation.

The principles and norms contained in a convention must therefore be known and interpreted to ensure the highest level of human rights protection at the national and local level.

On the other hand, and equally important is the cultural impact of a convention, which influences society as a whole and offers a new approach to society's view of the social group being subjected to human rights violations. This impact must be supported by appropriate initiatives such as public awareness-raising campaigns, mass media involvement and appropriate cultural instruments.

The cultural transformation arising from a convention must be guided. As well as its effect on information and communication systems, the convention must also have an impact on the education system, influencing university education in the various skills areas, promoting studies and research on the themes of the conventions and facilitating at every level the acquisition of skills and knowledge consistent with the Convention.

The structure of UN human rights conventions

Human rights conventions have a predefined structure. This consists of:

- the preamble, which includes the motivations and references to general considerations that inspired the writing of the convention;
- the articles, which are further divided into:
 - general principles and obligations that apply to all the articles
 - specific obligations that concern particular areas
 - the national and international monitoring system
 - the procedures for entry into force

- the establishment and regulation of international bodies
- the amendment system
- Some conventions provide additional protocols when some obligations and procedures have not been shared by the majority of the countries.

Procedures for approval and operation

The establishment of a human rights convention is based on the maximum consensus possible between the Member States of the UN. It is discussed in bodies defined by the General Assembly.

When there is agreement on a text it is put before the General Assembly for approval and the ratification process begins. This consists of the signing of the convention and the process of absorbing the convention into national legislation, after having verified that its norms are consistent with national laws.

A convention enters into force when a certain number of countries have ratified it. At that point an international body is nominated with the task of monitoring application and supporting the implementation process. These bodies receive periodical national reports on the monitoring and implementation of conventions by the ratifying states.

The Human rights are protected in various areas, always more comprehensive of new issues. See
<http://www.ohchr.org/EN/Issues/Pages/ListofIssues.aspx>

International bodies for the protection of human rights

Treaty monitoring bodies

UN Conventions generally have a system for monitoring and controlling the implementation of the norms contained within them. This system is based on “treaty bodies”: these are generally independent committees, made up of experts, which follow the application of the various conventions. Not all UN conventions have treaty bodies. The convention monitoring system is currently undergoing reform.

Office of the United Nations High Commissioner for Human Rights
 Within the United Nations operates the Office of the High

Commissioner for Human Rights (OHCHR), which is a department of the United Nations Secretariat and is mandated to promote and protect the enjoyment and full realization, by all people, of all the rights established in the Charter of the United Nations and in international human rights laws and treaties.

The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights. The Office leads efforts to integrate a human rights approach within the activities carried out by United Nations agencies.

The Human Rights Council and the International Court of Justice

The human rights system is based on the Charter of the United Nations, the International Court of Justice in The Hague in the Netherlands, and the Human Rights Council. The Charter of the United Nations (1945) is based on respect for human rights. The bodies that act to ensure the protection of human rights are the UN convention treaty bodies (see 1.3.2.1) and the International Court of Justice (1945). In 2006 the Human Rights Council was appointed under the General Assembly.

Other regional bodies

At the regional level, that is, at the level of the various continents, there are other bodies in charge of human rights. Among the most important is the Council of Europe, which has its own declaration on human rights (1953) and its own Court in Strasbourg.

All information on functioning of UN Human Rights system are available on OHCHR
<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

National institution on Human Rights

In some countries operate National Institution on Human Rights (NIHR) that have the goals to promote, protect and monitor Human Rights. These institutions can have different powers, regulated by the Paris

Principles (1992, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993).

Exist an international coordination of these institutions, see
<http://www.nhri.net/>

VII. The United Nations and Disability

The link between disability and human rights came out of criticism of the medical model of disability in the 1970s and 80s, as well as early work by the United Nations, starting in 1981 with the International Year and continuing with the Sub-commission on the human rights of people with disabilities chaired by Leandro Despouy (1992).

The Convention on the Rights of Persons with Disabilities (2006) arose from the observation that the 650 million people in the world living with disabilities are subject to continual human rights violations. Studies have shown that the previous Conventions have not protected people with disabilities, who have effectively remained second-class citizens. For this reason a new convention was required to explicitly acknowledge the human rights of people with disabilities.

People with Disabilities in International and Regional Documents

The United Nations has issued official documents, actions and programs regarding people with disabilities since 1971:

- *Declaration on the Rights of Mentally Retarded Persons (1971), approved by the UN General Assembly with Resolution 2856 (XXVI), 20 December 1971*
- *Declaration on the Rights of Disabled Persons, approved with Resolution 3447 (XXX) of the UN General Assembly, 9 December 1975*
- *Declaration on the Rights of Deaf-Blind Persons, approved with Decision 1979/24 of the Economic and Social Council, 9 May 1979*
- *International Year of Disabled Persons (1981), approved by the General Assembly with Resolution 31/123, 16 December 1976*
- *World Programme of Action Concerning Disabled Persons (1983-1992), adopted by the General Assembly on 3 December 1982*
- *Declaration on human rights of 25 July 1993 at the end of the Vienna*
- *Conference (157/23) (Vienna Declaration)*

The process of recognizing the rights of people with disabilities culminated in the Standard Rules on the Equalization of Opportunities for

Persons with Disabilities adopted by the General Assembly of the UN on December 20th, 1993 with Resolution 48/96.

The Standard Rules are the first international instrument (non-binding for the countries that adopt them) to introduce the concept of equal opportunity for people with disabilities; they create a national system for monitoring respect for human rights based on these very Standard Rules, by nominating a special rapporteur. The special decades denoted by the United Nations in the different continents acted as instruments of awareness-raising (see those of the Asia-Pacific region 1993-2002, which was renewed for 2003-2012, Africa 2000-2009 renewed 2010-2020, Arab 2003-2012 and South America 2006-2015).

There are much international documents on Human Rights and persons with disabilities See
<http://unipd-centrodirittiumani.it/it/database/Diritti-umani-di-persone-con-disabilita/46>

The United Nations agencies and people with disabilities

The ILO

The approach of the International Labour Office is also based on the principles of equal opportunity, equal treatment, non-discrimination and mainstreaming. These principles are underlined in ILO Convention 159/1983 Concerning Vocational Rehabilitation and Employment of Disabled Persons, accompanied by Recommendation 168/1983 on the same issue and other ILO Conventions on equal opportunity. The ILO also ran a campaign on “decent work” for people with disabilities and in 2002 launched a Code of Good Practice on the Employment of People with Disabilities.

See the ILO web site:
<http://www.ilo.org/global/lang-en/index.htm>

The WHO

The World Health Organization has been involved in the disability area through various sections or units focusing on specific conditions such as mental health and the prevention of blindness and deafness. As well as

these units, the section of the World Health Organization (WHO) concerned with disability and rehabilitation is the Disability and Rehabilitation Team (DAR). The DAR Team focuses its activities on five areas of action, namely health policies, health and rehabilitation, Community-Based Rehabilitation (CBR), assistive devices and appropriate technology, and skill building among medical staff and people in charge of political decisions concerning health and rehabilitation.

The areas of action of the DAR Team reflect the profound change in definitions of health and rehabilitation brought about by the Declaration of Alma-Ata. The right of every individual to active involvement in his or her own health and the responsibility of every community form the basis for the participation of people with disabilities in decision making concerning their own rehabilitation. Many people with disabilities do not have access to basic health care, let alone to specific rehabilitation services. From medical rehabilitation to Community-Based Rehabilitation (CBR), the DAR Team emphasizes that principles of social inclusion are the basis for any medical action aimed at these people. The firm planks of the DAR action strategy are: eradication of institutionalization as a treatment method; medical rehabilitation treatments based on early diagnosis and operation; and community involvement in the course of social inclusion and development.

See the WHO web site:

<http://www.who.int/disabilities/en/>

UNESCO

UNESCO has specifically focused on the education of people with disabilities through an approach based on inclusion; this approach addresses the educational needs of children, young people and adults with specific attention to those at risk of exclusion and marginalization.

As early as 1960 UNESCO had adopted a Convention against Discrimination in Education. The principles of inclusive education were then adopted at the World Conference on Special Needs Education: Access and Quality, where the Salamanca Statement was approved (Spain, 1994) and updated in the 2009. UNESCO dedicates special reports to the implementation of inclusive education activities.

Moreover, a special initiative is underway: the Flagship “The Right to Education for Persons with Disabilities: Towards Inclusion,” designed as

an instrument to build strategies for the development of high quality inclusive education. This theme was taken up again both at the World Education Forum (Dakar, Senegal, 2000) and at the Mid-Term Review Conference on adult education (CONFINTEA, Bangkok, Thailand, 2003), where for the first time particular attention was given to illiterate people with disabilities.

Recently, the International Bioethics Committee launched the Universal Declaration on Bioethics and Human Rights, in which topics related to the protection of human rights in connection with the new biomedical sciences, were discussed with particular attention given to people with disabilities. A special Inclusive Education Unit works within UNESCO.

See the UNESCO web site:

<http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/>

UNICEF

UNICEF is the UN fund that protects the human rights of children, and thus also those of children with disabilities. The international instrument that protects the human rights of minors with disabilities is the Convention on the Rights of the Child, to which UNICEF dedicates the Innocenti Research Centre. This convention - which in Art. 2 underlines the child's supreme interest - lays out the principles and norms of protection for ensuring the human rights of all minors. In particular, in Art. 23 it focuses specifically on children with disabilities and their education.

See UNICEF web site: <http://www.unicef-irc.org/>

Country team

The UN **has in every** country a team that include all the staff of UN coming from different agencies and programmes. This country team **assesses** the State on different issues related with international standards, **also on disability**.

Recently the UN has edited a Guidance Note for United Nations Country Teams and Implementing Partners for

including Rights of PwD in the UN programming at country level, see:

<http://www2.ohchr.org/english/issues/disability/docs/GuidanceNoteJuly2010.pdf>

Other agencies

Among the other international bodies dealing with people with disabilities we also note the Organization of American States (OAS), which has approved the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999), and the Council of Europe, which has a specific Disability Action Plan (2005).

See Organization of American States -

<http://www.oas.org/juridico/english/treaties/a-65.html>

Council of Europe - http://www.coe.int/t/DG3/default_en.asp

VIII. International debate on Disability

The condition of people with disabilities over the centuries

Since ancient times people with disabilities have been considered negatively. Taking the history and culture of various countries and continents as a starting point, one can reconstruct the form of treatment they have undergone. In recent centuries this negative view has been embodied in similar treatments in all countries, based on segregation, different treatment justified by health conditions, and intervention models that created special treatments, often far removed from ordinary social life: it is the medical model that attributes to the condition of subjective limitation, to illness, the disadvantaged condition of people with disabilities. The social model, on the other hand, highlights the fact that disability is a social relationship and that people with disabilities undergo the limitations and prejudices created by society. The World Health Organization's ICF, which is the scientific reference framework for this issue, emphasizes that disability depends on the interaction between environmental, social and personal factors. The more society embraces people's characteristics and develops their abilities, the more it is able to remove barriers, obstacles and prejudices.

Disability Models

The model of disability are in change. During the last 40 years there are an evolution from medical and individual model to social model, to ICIDH (WHO, 1980), to Standard Rules (UN, 1993), to ICF (WHO, 2001), to CRPD (UN, 2006).

Medical Model

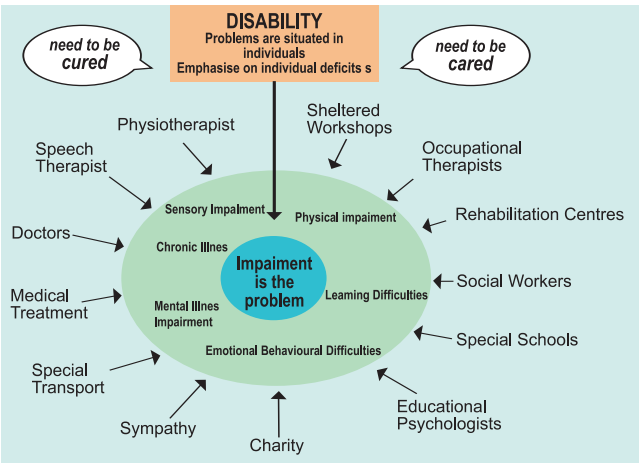


Figure 1: Medical model of disability (Yokotani, 2001)

Social Model

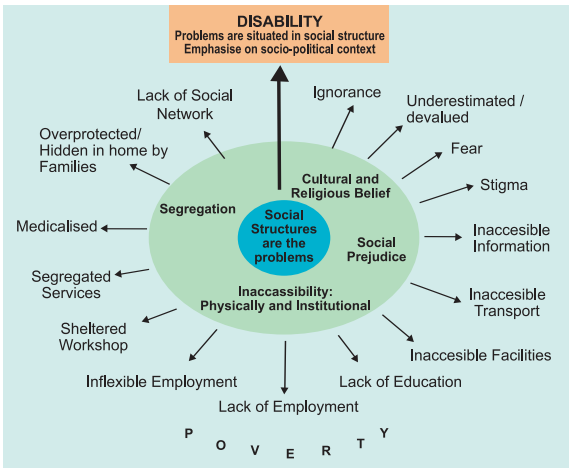


Figure 2: Social Model of disability (Yokotani, 2001)

Biopsychosocial Model

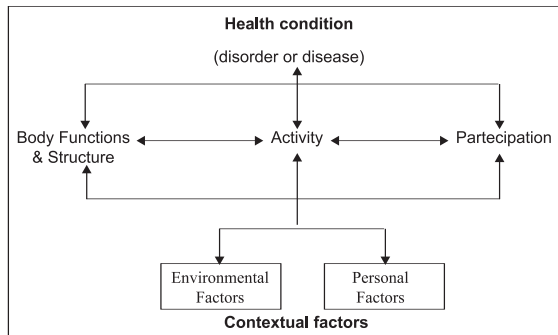


Figure 3: 'Interactions between the components of ICF' (World Health Organisation, 2001)

Human Rights

Disability is an evolving concept. The human rights-based approach highlights the fact that people with disabilities are invisible citizens because of the segregation and social exclusion produced by society. They are discriminated against and do not have equal opportunities. They are subject to unjustified differential treatment compared with other citizens, which continually causes violations of their human rights.

The Convention aims to ensure the protection of human rights of people with disabilities by committing all the sectors and responsible institutions of the states that ratify it to acting using suitable policies, legislation and resources.

IX. The United Nations Convention on the Rights of Persons with Disabilities - annotated version

History of the Convention

As far back as 1987 and 1989 Italy and Sweden had put forward a proposal for a convention, which was rejected by the United Nations.

Following the approval of a document at the United Nations World Conference against Racism in Durban (South Africa) in September 2001, Mexico presented a Resolution, which was approved by the General Assembly (Resolution 56/168, 19 December 2001), to form an Ad Hoc Committee that would verify the need to draw up a Convention on the Rights of Persons with Disabilities. At the 3rd session of the AHC (June 2003), was decided that a Convention was needed, and a working group was appointed to prepare a draft text (February 2004). At the 6th session of the AHC (August 2005), the chairman undertook to prepare a text summarizing the discussion thus far (October 2005). At the 7th and 8th sessions the text was negotiated and approved (25 August 2006); then it was submitted to the General Assembly which finally approved it on December 13th 2006. This was the United Nations Convention approved in the shortest ever time and with the greatest participation of civil society: throughout the writing and negotiating process the International Disability Caucus (which involved around 70 associations of people with disabilities and their families) played an important and at times decisive role, mobilizing energies from all over the world. In the August 2006 session, 800 representatives of non-governmental organizations were present and 50 official government delegations included people with disabilities as experts.

Description of the structure of the Convention

The Convention on the Rights of Persons with Disabilities consists of a preamble, which includes the motivations, references to documents and general considerations that inspired the writing of the convention, and the 50 articles, which can be divided into: general principles and obligations that apply to all the articles (Arts. 1-7); specific obligations that concern particular areas (Arts. 9-32); the national (Art. 33) and international monitoring system, with the establishment and regulation of the international Committee (Arts. 34-40); the procedures for entry into force and

the amendment system (Arts. 35-50). The Convention is accompanied by the Optional Protocol, which discusses individual appeals (Arts. 1-8) and the international Committee's inquiries (Art. 6).

Acknowledgement of other United Nations conventions

The Convention on the Rights of Persons with Disabilities was written with a view to recognizing the rights that were already laid out in previous United Nations conventions, rather than introducing new rights. This means that in interpreting the text it is important to keep the text of the other conventions in mind.

In the Convention there are many articles (Arts. 10, 13-18, 29-30) that recognize rights already recognized in other United Nations conventions, while nevertheless introducing appropriate methods of access to and enjoyment of these rights. When outlining these articles the other conventions must be kept in mind.

New rights: Accessibility, Living Independently and Personal Mobility

The Convention introduces protection for rights that can only be recognized for people with disabilities, specifically "accessibility" (Art. 9), "living independently" (Art. 19) and "personal mobility" (Art. 20). This means that it actually recognizes new forms of legal protection tied to the particular nature of the discrimination and unequal opportunity faced by people with disabilities. Of particular importance is the overcoming of institutionalizing practices (Art. 19), which can be connected to the right to not be subjected to torture or cruel, inhuman or degrading treatment or punishment (Art. 15).

Systemic articles (Arts. 8, 12, 31)

The Convention identifies some areas that play an essential role in supporting the change in approach to people with disabilities as well as in transforming the social stigma attached to them.

Ratification, Monitoring and Implementation

The reform of Treaty Bodies and the UN Human Rights Council

The United Nations is currently reforming the monitoring system for all its conventions, in order to create a single monitoring strategy; it is likely

that there are also going to be changes to the international Committee of the Convention on the Rights of Persons with Disabilities in the near future. In any case, it is important to develop the relationship between international monitoring systems and the UN Human Rights Council.

Implementation

The Convention and disability policies

The impact of the Convention on disability policies will be important both for countries that already have relevant legislation and for those that do not or have only very weak legislation. When ratifying the Convention each country must examine the existing national legislation to check for conformity with the norms of the Convention, and make modifications if necessary. This is an early opportunity for the Organizations of people with disabilities to communicate with the government and relevant institutions, as these organizations must be involved in this process (see Art. 4 subsection 3, quoted in section 3.1.4). This principle also applies in the later stages of implementation, above all concerning the national reports that governments must periodically present to the Committee on the Rights of Persons with Disabilities. These procedures give the country's Organizations of people with disabilities the chance to press the government to draw up a national disability plan and oversee its application.

The relationship between the monitoring system and disability policies

A further opportunity to request the establishment of a national disability plan is tied to the construction of the national monitoring system (see section 3.4), which should define the various areas of action on which to develop and verify the effectiveness and progress of human rights policies. It is important to link the monitoring system to, for example, international funding tied to Millennium Development Goals and therefore to the PRSP. The more monitoring is tied to national and local development policies, the more it will be effective. It is clear, in any case, that the important point is the involvement of the Organizations of people with disabilities in the definition of policies.

For the Millennium development goals see
<http://www.un.org/millenniumgoals/>

Convention on the Rights of People with Disabilities

Preamble

The States Parties to the present Convention,

- (a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- (b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- (c) Reaffirming the universality, indivisibility, interdependence and inter-relatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- (d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- (e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,
- (f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,
- (g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,
- (h) Recognizing also that discrimination against any person on the basis

of disability is a violation of the inherent dignity and worth of the human person,

- (i) Recognizing further the diversity of persons with disabilities,
- (j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,
- (k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,
- (l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,
- (m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,
- (n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,
- (o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,
- (p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,
- (q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,
- (r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

- (s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,
- (t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,
- (u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,
- (v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,
- (w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,
- (x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,
- (y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

A good toolkit for the application of CRPD is available in http://www.un.org/disabilities/documents/toolaction/ipu_hb.pdf

***Structural articles that spell out obligations and protections
(Arts. 1-5)***

It is important to show that the reading and interpretation of the Convention is based on the understanding of what can be defined as the “structural” articles, which must be used as a basis for explaining and interpreting the obligations and protections fundamental to the rights recognized in each individual article. These articles must, therefore, always be kept in mind when outlining the contents of the Convention.

Article 1: Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

A research of Brunel University (2002) shows that ‘the definitions and the criteria for determining disability that are laid down in national legislation and other administrative instances differ widely throughout the current 15 Member States. With the enlargement of EU at 27 countries there are 27 different definitions.’ In

http://europe.eu.int/comm/employment_social/index/complete_report_en.pdf

Article 2: Definitions

For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non spoken languages;

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

“Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

The WHO stresses that all persons during the life will live experience of disability. The Universal Design is the appropriate approach includes all members of society in planning access to environment, goods and services. See <http://www.ncsu.edu/www/ncsu/design/sod5/cud/>

Article 3: General principles

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.



Vancouver Island (Canada) (Archive DPI-Italy)

The purpose, definitions and principles of the Convention (Arts. 1-3)

The first three articles of the Convention describe the purpose (Art. 1), essential definitions (Art. 2) and principles (Art. 3) on which the whole system is based. It is important to link these articles to the human rights-based approach. In outlining the Convention it is equally important to bear in mind the motivating and clarifying points contained in the Preamble. Given the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms, it is important to consider them, where necessary, throughout the illustration of the contents of the Convention. Furthermore, given the particular nature of the discrimination and unequal opportunities faced by people with disabilities, the responsibility of the state to treat all citizens with disabilities the same as other people can affect both individuals (who must in any case be protected) and behaviour and barriers related to society as a whole.

Article 4: General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- (i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party

undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

Article 4 lists and defines the obligations that states take on in ratifying the Convention. These commitments make up an essential frame of reference to which each specific right must be linked.

Subsection 2 underlines that, although the convention is to be applied progressively with regard to economic and social rights, this does not prejudice recognized rights “that are immediately applicable according to international law.” This means that individuals must in any case not be discriminated against and are protected by the Convention. There is an important recognition of the role of organizations of people with disabilities “in the development and implementation of legislation and policies to implement the (...) Convention, and in other decision-making processes concerning issues relating to persons with disabilities.”

The obligations of the States that ratify CRPD are transposed at national level in various forms. Some countries define a National Action Plan on Disability (Australia, Denmark, Kosovo, New Zealand, North Ireland, Sweden...), other countries organize specific body to implement CRPD and disability policies.

Council of Europe promote national disability action plan, see

[http://www.coe.int/t/e/social_cohesion/soc-sp/integration/02 Council of Europe Disability Action Plan/](http://www.coe.int/t/e/social_cohesion/soc-sp/integration/02_Council_of_Europe_Disability_Action_Plan/)

Article 5: Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Equal treatment and non-discrimination (Art. 5)

The Convention recognizes that “all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.” States ratifying the Convention “shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”

“Discrimination on the basis of disability” means “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and

fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation” (Art. 2).

From a legal perspective, discrimination means to differentiate between two people or treat them differently when there is actually no significant difference between them or to treat situations that are actually different in the same way. It is important to understand how the comparison between a person with a disability and another person is made, in order to reveal the discriminatory treatment.

Discrimination can be direct or indirect. Direct discrimination is when a person is treated less favourably than another is, has been or would be treated in a similar situation, because of his or her disability. Indirect discrimination is when an apparently neutral provision, criterion or practice could particularly disadvantage people with disabilities compared with others. It is important to provide appropriate and easily understandable examples in the context of the country in which the course is being run.

The Eurobarometer (periodical research on EU situation) n° 263 on discrimination says : “Views about the existence of discrimination on the grounds of disability vary quite significantly among the countries surveyed. On average, there is little difference between the former EU15 countries and the 10 new Member States (53% and 52%, respectively).

However, there are nonetheless considerable differences in opinion between the countries surveyed. Discrimination on the basis of disability is perceived to be most widespread in Italy (68%) and France (66%) and least so in Denmark (32%). See:http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_en.pdf

The UK legislation against discrimination is a good example. See:<http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1073792248&type=RESOURCES>

An important document on Equality is produced by Equality Rights Trust, see:
<http://www.equalrightstrust.org/endorse/index.htm>

Reasonable accommodation (Art. 5)

The Convention states that “in order to promote equality and eliminate discrimination,” ratifying states “shall take all appropriate steps to ensure that reasonable accommodation is provided” to victims of violations of the human rights recognized in the Convention. “Reasonable accommodation” means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (Art. 2). The concept of reasonable accommodation varies from country to country, according to cultural considerations, the legal protection system, rights protection policies and existing legislation. The interpretation of the word “reasonable” is influenced by cultural and material factors (i.e. what action is considered reasonable in a particular country for a person with a disability), as is the concept of “disproportionate or undue burden” (which depends on the wealth of the country, the resources that are available and therefore investable, and the level of rights recognition); equally, the interpretation of the word “accommodation” can vary on the basis of, for example, the technology available. It should nevertheless be remembered that based on article 4 subsection 2 of the Convention (see section 3.1.4) the lack of financial resources cannot prejudice recognized rights “that are immediately applicable according to international law.” Furthermore, the “denial of reasonable accommodation” is considered discrimination (Art. 2).

Article 6: Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

To begin with, at home, I had many problems because my parents overprotected me, for example they did not want me to study at college, although my brother, also with disability did not have that issue. I think mainly because I am a woman. Carmen Najera, Spain. In http://www.enil.eu/enil/index.php?option=com_content&task=view&id=402&Itemid

According to a Spanish study (1994), throughout the European Union 76% of able-bodied men have jobs, as against 36% of men with disabilities, while the corresponding figures for women are 55% and 25% respectively. See <http://www.wwda.org.au/europedisc1.pdf>

A good example of report of condition of women with disabilities coming from Women with Disabilities Australia (WWDA). See www.wwda.org.au

Article 7: Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Children with disabilities are very vulnerable group, subject to abandon, abuse and exploitation. There are many reports on their condition. See http://www.unicef.org/protection/index_28534.html

Multiple discrimination (Arts. 6 and 7)

The Convention dedicates particular protection to people with disabilities who are subject to greater risk of discrimination, namely women (Art. 6) and children (Art. 7). These two articles must, therefore, be used as legal instruments that reinforce the protection of women and children with disabilities in all the articles of the Convention.

Furthermore, given the existence of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, these documents interact with the contents of the Convention. In particular, the principles of inclusion and mainstreaming of actions and policies aimed at children with disabilities are reinforced, while the 1989 Convention relegated these principles to article 23, with a logic that was still based on special care. With regard to the protection of the rights of children with disabilities, subsections 3, 4, and 5 of article 23 (Respect for home and the family) should also be kept in mind.

Article 8: Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

- (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
- (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

Travelling to different conferences and negotiations as a Norwegian minister on crutches, I was very often met with the question: “Did you have a ski-accident?”. They were always smiling, but when I replied “No, I was born like this” the smile usually would disappear and they would say: “I’m sorry”. I think this story underlines the biggest challenge we as people afflicted with disabilities face today. Even though I was the same person, and the crutches were the same, their view of me would suddenly

change, when they got to know that I was born with SB and had not just broken my foot. Guro Fjellanger, Norway. In

<http://www.ifglobal.org/en/guro-fjellanger.html>

- (c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

- (a) Initiating and maintaining effective public awareness campaigns designed:

(I) To nurture receptiveness to the rights of persons with disabilities;

(II) To promote positive perceptions and greater social awareness towards persons with disabilities;

(III) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

- (b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

- (c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

- (d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Traditionally the image of persons with disabilities in the media are negative, promoting the medical model of disability. ILO have edited guidelines on the media and disability, see

http://www.ilo.org/skills/what/pubs/lang-en/docName-WCMS_127002/index.htm

Awareness-raising (Art. 8)

In order to transform society it is vital to raise awareness of the discrimination and unequal opportunities faced by people with disabilities. The Convention requires ratifying states to “adopt immediate, effective and appropriate measures (...) to raise awareness

throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities (...), to combat stereotypes, prejudices and harmful practices (...) [and] promote awareness of the capabilities and contributions of persons with disabilities.” The mass media, public awareness campaigns and correct information for children play an essential role, which is favoured by early and correct information about the conditions of people with disabilities.

Article 9: Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

Persons with disabilities regularly experience various forms of discrimination when travelling by air. The most common ones are:

- **denied boarding** for arbitrary reasons
- **degrading treatment**
- **poor quality assistance or additional charges** to receive assistance
- **mobility equipment and assistive devices being damaged, destroyed or lost**
- **unjustified quotas** of disabled passengers per plane...

in

http://www.edf-feph.org/Page_Generale.asp?DocID=13854&the-bloc=13859

New Legislation: Regulation (EC) no 1107/2006 of the European Parliament and of the Council of 5 July 2006

concerning the rights of disabled persons and persons with reduced mobility when travelling by air

- (b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- (a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
- (d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.



Access to San Francesco da Paola church in Naples (Italy) (Archive DPI-Italy)

Physical access and Universal Design (Arts. 9, 18-21)

Article 9 of the Convention requires ratifying states to “take appropriate measures to ensure to persons with disabilities access (...) to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas” in order to “enable persons with disabilities to live independently and participate fully in all aspects of life.” This article must be linked to articles 19 (Living independently and being included in the community) and 20 (Personal mobility), as well as articles 18 (Liberty of movement and nationality) and 21 (Freedom of expression and opinion, and access to information).

Article 10: Right to life

States Parties reaffirm that every human being has the inherent right

to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Rights taken from other conventions (Arts. 10, 13-18, 29-30)

The right to life (Art. 10), access to justice (Art. 13), liberty and security of the person (Art. 14), the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Art. 15), the right to not be subjected to exploitation, violence and abuse (Art. 16), the protection of the integrity of the person (Art. 17), liberty of movement and nationality (Art. 18), participation in political and public life (Art. 29) and participation in cultural life, recreation, leisure and sport (Art. 30) are all rights taken from other conventions, but at last also attributed to people with disabilities.

NETHERLANDS

Declarations made upon signature:

Article 10

The Kingdom of the Netherlands acknowledges that unborn human life is worthy of protection. The Kingdom interprets the scope of Article 10 to the effect that such protection - and thereby the term 'human being' - is a matter for national legislation.

The right to live of persons with disabilities is denied in different forms. The Royal college of Obstetricians and Gynaecology of UK (2006) asking to Norfolk bioethics committee “to consider permitting the euthanasia of seriously disabled newborn babies. The college is arguing for “active euthanasia” to be considered for the overall good of parents, sparing them the emotional burden and financial hardship of bringing up the sickest babies”. Analogous request coming from physicians of Netherland in the Groningen protocol. See position of DPI-Europe

Article 11: Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

International cooperation and emergencies (Arts. 11 and 32)

It is particularly important that rich ratifying states use their resources for international cooperation and the promotion of human rights for people with disabilities. At the international level, this involves a “twin-track approach”: increasing the resources allotted to people with disabilities and inserting the theme of disability in all international cooperative projects and programmes. Article 32 of the Convention commits states to “ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities; facilitating and supporting capacity-building (...), facilitating cooperation in research and access to scientific and technical knowledge; providing (...) technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies” (Art. 32). Ratifying states must “ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies, and the occurrence of natural disasters” (Art. 11). All these cooperative measures must be carried out “in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities” (Art. 32).

In the EU Strategy on Disability (2010-2020) a specific action are included in the emergency situation. See

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1505&format=HTML&aged=0&language=EN&guilanguage=en>

MAURITIUS

Reservation made upon signature:

“The Government of the Republic of Mauritius makes the following reservations in relation to Article 11 of the United Nations Convention on the Rights of Persons with Disabilities which pertains to situations of risk and humanitarian emergencies.

The Government of Mauritius signs the present Convention subject to the reservation that it does not consider itself bound to take measures specified in article 11 unless permitted by domestic legislation expressly providing for the taking of such measures.”

Article 12: Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Reservations:

Equal Recognition Before the Law - Convention Article 12.4

The United Kingdom's arrangements, whereby the Secretary of State may appoint a person to exercise rights in relation to social security claims and payments on behalf of an individual who is for the time being unable to act, are not at present subject to the safeguard of regular review, as required by Article 12.4 of the Convention and the UK reserves the right to apply those arrangements. The UK is therefore working towards a proportionate system of review."

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Equal recognition before the law (Art. 12)

The Convention also introduces a profound innovation in the area of legal protection for people who cannot represent themselves. It obliges ratifying states to protect all people equally before the law and to ensure support for this right by tying it to the respect for human rights. This means that any treatment of people who are unable to represent themselves will not be allowed to violate the norms contained in both the Convention and the international human rights legislation. This implies a progressive change in services and treatments, which will have to overcome practices of institutionalization and forms of rights protection limited solely to inheritances and will introduce new attention to their quality of life. This also applies for people who are temporarily unable to represent themselves such as people subject to compulsory psychiatric treatment.

In Europe Italy and Hungary have specific legislation in line with the art. 12 of the CRPD.

EGYPT

Interpretative declaration made upon signature

The Arab Republic of Egypt declares that its interpretation of article 12 of the International Convention on the Protection and Promotion of the Rights of Persons with Disabilities, which deals with the recognition of persons with disabilities on an equal basis with others before the law, with regard to the concept of legal capacity dealt with in paragraph 2 of the said article, is that persons with disabilities enjoy the capacity to acquire rights and assume legal responsibility ('ahliyyat al-wujub) but not the capacity to perform ('ahliyyat al-'ada'), under Egyptian law.

Interpretative declaration made upon signature:

The Arab Republic of Egypt declares that its interpretation of article 12 of the International Convention on the Protection and Promotion of the Rights of Persons with Disabilities, which deals with the recognition of persons with disabilities on an equal basis with others before the law, with regard to the concept of legal capacity dealt with in paragraph 2 of the said article, is that persons with disabilities enjoy the capacity to acquire rights and assume legal responsibility ('ahliyyat al-wujub) but not the capacity to perform ('ahliyyat al-'ada'), under Egyptian law.

MEXICO

Interpretative declaration (Translation) (Original: Spanish)

The Political Constitution of the United Mexican States, in its article 1, establishes that: "(...) any discrimination on the grounds of ethnic or national origin, gender, age, disability, social status, health, religion, opinion, preference, civil status or any other form of discrimination that is an affront to human dignity and is intended to deny or undermine the rights and freedoms of persons is prohibited".

In ratifying this Convention, the United Mexican States reaffirms its commitment to promoting and protecting the rights of Mexicans who suffer any disability, whether they are within the national territory or abroad.

The Mexican State reiterates its firm commitment to creating conditions that allow all individuals to develop in a holistic manner and to exercise their rights and freedoms fully and without discrimination. Accordingly, affirming its absolute determination to protect the rights and dignity of persons with disabilities, the United Mexican States interprets paragraph 2 of article 12 of the Convention to mean that in the case of conflict between that paragraph and national legislation, the provision that confers the greatest legal protection while safeguarding the dignity and ensuring the physical, psychological and emotional integrity of persons and protecting the integrity of their property shall apply, in strict accordance with the principle pro homine.

The Commissioner of Human Rights of Council of Europe, during the study visit to the countries, particularly in the east and central Europe, have reported the dramatic condition of persons with intellectual and psycho-social disabilities, see

http://www.coe.int/t/commissioner/WCD/visitreports-byyear_en.asp#

Article 13: Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

In 2003 the European Committee of Social Rights from the Council of Europe, on the base of a collective complains of Autism Europe, recognize that in France the non-provision of education to people with autism due to the lack of inte-

gration in mainstream education on the one hand and the dramatic shortage of specialised educational institutions on the other hand, see
<http://www.autismeurope.org/publications/rights-and-autism-2/>

Article 14: Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- (a) Enjoy the right to liberty and security of person;
- (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

The OHCHR have paid attention to the condition of the vulnerable detainees, include persons with disabilities, see Infonote n° 4/2008
http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_4.pdf

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

NETHERLANDS

Declarations made upon signature:

Article 15

The Netherlands declares that it will interpret the term ‘consent’ in Article 15 in conformity with international instruments, such as the Council of Europe Convention on Human Rights and Biomedicine and the Additional Protocol concerning Biomedical Research, and with national legislation which is in line with these instruments. This means that, as far as biomedical research is concerned, the term ‘consent’ applies to two different situations:

- 1. consent given by a person who is able to consent, and*
- 2. in the case of persons who are not able to give their consent, permission given by their representative or an authority or body provided for by law.*

The Netherlands considers it important that persons who are unable to give their free and informed consent receive specific protection.

In addition to the permission referred to under 2. above, other protective measures as included in the above-mentioned international instruments are considered to be part of this protection.

An expert seminar of the Office of the High Commissioner for Human Rights (2007) on freedom from torture and ill treatment and persons with disabilities in the conclusion stress that “persons with disabilities are subjected to torture and other forms of ill treatment, usually in the forms of forced medical treatment, institutionalization, rape, forced abortion or sterilization, forms of restraints, etc.; torture and CIDT in relation to persons with disabilities goes beyond “disability as a consequence or result of torture and ill treatment”; torture and CIDT of persons with disabilities takes place inside the institutions as well as outside the institutions, such as within the family or at the community level”. See

<http://www2.ohchr.org/english/issues/disability/torture.htm>

Article 16: Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

UN Study of Violence Against Women Finds 50% of Disabled Women Experience Abuse. See http://www.disabilityworld.org/01_07/abuse.shtml

Autism Europe have developed a code of good practice to prevent violence and abuse and specially sexual abuse toward children, young people and women in institutions and to promote good practice, see <http://www.autismeurope.org/publications/reports-and-good-practices/>

Article 17: Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Frozen in time: the disabled nine-year-old girl who will remain a child all her life (The Guardian, Thursday 4 January 2007)

Ashley's parents, "college-educated professionals" living in Washington state, have decided that their nine-year-old daughter, with a severe disabilities she has suffered from birth, remain child for all life.

The cause of the controversy is the "Ashley Treatment" - a course of surgery and hormone supplements devised for her at her parents' request and with the blessing of doctors - that will for ever keep her small. It involves surgical operations, including a hysterectomy, and hormone prescriptions that will, in effect, freeze-frame her body at its current size.

Although she has a normal life expectancy, she will, physically, always be nine years old. Her growth has been suspended at 4ft 5in (1.3 metres), rather than the 5ft 6in she would probably otherwise have become. Her weight will stick at around 75lb (34kg) rather than 125lb.

See

<http://www.guardian.co.uk/world/2007/jan/04/health.to.pstories3>

Article 18: Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- (b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as

immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

THAILAND

Interpretative declaration:

“The Kingdom of Thailand hereby declares that the application of Article 18 of the Convention shall be subject to the national laws, regulations and practices in Thailand.”

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Reservations:

Liberty of Movement

The United Kingdom reserves the right to apply such legislation, insofar as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, as it may deem necessary from time to time.

A research of the ANED (2010) show that persons with disabilities not enjoy the full European citizenship, because not accessibility of the system of transport and not homogeneous system in the EU member states about welfare and benefits for disabled people. See

<http://www.disability-europe.net/?jsEnabled=1>

Article 19: Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

The report of a study carried out in the EU Member States and Turkey, *De-institutionalisation and community living: outcomes and costs* (2007), found that nearly 1.2 million disabled children and adults lived in long-stay residential institutions. Over a quarter of places in institutions are filled by people with intellectual disabilities, while people with mental health problems are the next most represented group. The total number of residents is likely to be even higher, as most Member States keep only partial data about the number of people in institutions. DECLOC found that in 16 out of 25 countries for which information was available, state funds (local or regional) are used at least in part to support institutions of more than 100 places. In 21 countries state funds are used to support institutions of more than 30 places. See

<http://www.enil.eu/elib/app/webroot/files/2009-09-21%20Expert%20Group%20Report%20Final%20draft.pdf>

For information on independent living see:
www.independentliving.org

Protection of the private sphere (Arts. 19, 22-23)

Taking the right to independent living and social inclusion as a starting point (Art. 19), ratifying states recognize the right of people with disabilities to an appropriate standard of living for “themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.” Article 23 recognizes “the right (...) to marry and to found a family,” “to decide freely and responsibly on the number (...) of their children” and to maintain “their fertility on an equal basis with others.”

Article 20: Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.



Adapted wheelchair in inner Goa (India) (Archive DPI-Italy)

The assistive devices represent an important tool for independent living and freedom to move. See a list of the important technological instruments to support independence

<http://www.independentliving.org/links/links-assistive-devices.html>

Article 21: Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons

with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

EU have approved standard of accessibility in the information technology and communication on the base of a Resolution on eAccessibility (6.2.2003), that stress the persons with disabilities must enjoy access to knowledge society. This produce accessible rules on software, web site and hardware production. The EC have the same approach on access to television programmes. Declaration on e-inclusion of Riga (June 2006), the Communication of European Commission on e-inclusion and e the i2010 - a Society for European Information for growth and employment, COM(2007)694 final.

See

http://ec.europa.eu/information_society/eeurope/i2010/index_en.htm and http://europa.eu/legislation_summaries/information_society/l24226h_en.htm

and

http://ec.europa.eu/information_society/activities/einclusion/index_en.htm

Article 22: Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference

with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

I spent twelve years of my life inside a special institution for disabled youth where I finished elementary and secondary school of economy. Then I decided to study at the university in Ljubljana. I wanted to do all the everyday, downright banal things, to taste all the joys of life of which I was robbed in the long years of living in an institution. To go shopping, making a decision of what to cook and eat (with the risk of making it inedible), to come home whenever I feel like it, without having to explain and make excuses to anybody to decorate and tidy the apartment the way I wanted it, to put on the walls whatever I wished...

The worst was the fact that inside the institution they take away or in other words is left unacknowledged your right to make decisions about yourself as you automatically become an object to be prodded and looked upon by various experts, an object of study. The individual's opinion and objections has no bearing in this context, nor no weight or credibility aside of it being a symptom of the individual's generic or primary disease or injury or some other kind of pathology. Elena Peāariā, Slovenia in http://www.enil.eu/enil/index.php?option=com_content&task=view&id=359

Article 23: Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age

to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

The opportunity to be married is less for person with disabilities and more for a woman with disabilities.

“Universally, the incidence of marriage for disabled women is lower than that for disabled men. In Nepal, a society where marriage is the norm for women, 80 percent of women with disability are reported to be unmarried. In China, the situation is comparatively better; 52 percent of disabled women over the age of 18 are unmarried”. See http://www.leadershipeditors.com/ns/index.php?option=com_content&view=article&id=21273:sexuality-and-women-with-disability&catid=78:family-home-zone&Itemid=209

- (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age- appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

POLAND

Reservation made upon signature:

“The Republic of Poland understands that Articles 23.1 (b) and 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto.”

- (c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal

rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

NETHERLANDS

Declarations made upon signature:

Article 23

With regard to Article 23 paragraph 1 (b), the Netherlands declares that the best interests of the child shall be paramount.

Article 24: Education

1. States Parties recognize the right of persons with disabilities to education.

With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.

I have tried to go to school many times, but I was not allowed to continue because I smelled too much. Nobody wanted to be with me.

He has not yet given up hope of going to school. "Maybe I'm too old for ordinary school, but if only I could have some education which teaches me to read, write and calculate, I would feel much happier", he says. Romani Josef, 19, Tanzania

(in <http://www.ifglobal.org/en/romani-josef.html>)

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Reservations:

Education - Convention Article 24 Clause 2 (a) and 2 (b)

The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.

Declaration:

"Education - Convention Article 24 Clause 2 (a) and (b)

The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.

The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention."

- (c) Reasonable accommodation of the individual's requirements is provided;
 - (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
- (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Education (Art. 24)

The convention requires ratifying states to recognize “the right of persons with disabilities to education,” “without discrimination and on the basis of equal opportunity” and to “ensure an inclusive education system at all levels.” The stated aims of education are important: “full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity”; “development (...) of (...) personality, talents and creativity, as well as (...) mental and physical abilities” and “enabling persons with disabilities to participate effectively in a free society.”

The report on inclusive education data in Europe (2008) from the European Agency for Development in Special Needs Education show that the 60,1% of the pupils study in a special class or in a special school. Only in Italy the 99,6% of pupils go in ordinary school.

<http://www.european-agency.org/publications/ereports/special-needs-education-country-data-2008/SNE-Data-2008.pdf>

Article 25: Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

“A significant group of adolescents and youth with disabilities are not able to access programmes targeting sexuality and reproductive health because they do not address

the specific concerns of this socially marginalised group. In order to ensure that all citizens of the country are guaranteed the right to health, it is imperative that the concerns of youth with disabilities are mainstreamed into government health and population policies,” says Dr. Renu Addlakha, Fellow for Leadership Development, MacArthur Foundation in India. See http://www.dnis.org/interview.php?issue_id=18&volume_id=3&interview_id=70

- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

Andreï was born prematurely. When he was 10 days old, Andreï developed a high fever, later his parents learned that he had been suffering from meningitis. Andreï's mother kept a close eye on her child and measured his head circumference regularly. After 5 weeks she noticed that her son's head started to grow. She notified the doctors and they referred her to another specialist. A CT scan was made, but according to the specialist there was no indication for surgery. Andreï's parents begged the specialist to treat their child, but he refused. They were told to take Andreï home and accept his fate. He was beyond help and was probably going to die. If not, his brain would be so damaged already that he was going to be "like a vegetable". After receiving surgery in Austria, Andreï grew up to be a bright 10-year-old boy. The specialist who refused

to operate on Andrei claims that he is an exceptional case and that his parents simply have been very lucky. Andrei, 10, Romania
In <http://www.ifglobal.org/en/andrei-romania.html>

- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

REPUBLIC OF KOREA
Upon ratification Reservation:

“... with a reservation on the provision regarding life insurance in the paragraph (e) of the Article 25.”

- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Health (Art. 25)

The Convention confirms “that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability” and requires ratifying states to “take all appropriate measures to ensure access for persons with disabilities to health services that are gender sensitive.”

Ratifying states must “provide persons with disabilities with the same range, quality and standard of (...) health care and programmes as provided to other persons,” and “provide those health services needed by persons with disabilities specifically because of their disabilities,” “as close as possible to people’s own communities, including in rural areas.”

MALTA

Interpretative statement and reservation made upon signature:

“(a) Pursuant to Article 25 of the Convention, Malta makes the following Interpretative Statement - Malta understands that the phrase “sexual and reproductive health” in Art 25 (a) of the Convention does not constitute recognition of any new international law obligation, does not create any abortion rights, and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point that where health services are provided, they are provided without discrimination on the basis of disability. Malta’s national legislation, considers the termination of pregnancy through induced abortion as illegal.

NETHERLANDS

Declarations made upon signature:

Article 25

The individual autonomy of the person is an important principle laid down in Article 3 (a) of the Convention. The Netherlands understands Article 25 (f) in the light of this autonomy. This provision is interpreted to mean that good care involves respecting a person’s wishes with regard to medical treatment, food and fluids.

Article 26: Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

- (a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.



Hungarian dancing group in Budapest (Hungary) (Archive DPI-Italy)

Habilitation and rehabilitation (Art. 26)

The convention commits ratifying states to taking “effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.” This requires the organization, strengthening and extension of “comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services.” Habilitation and rehabilitation must “begin at the earliest possible stage” and be “based on the multidisciplinary assessment of individual needs and strengths;” “support participation and inclusion in the community and all aspects of society” and be “voluntary” and “available to persons with disabilities as close as possible to their own communities.”

A Survey on discrimination of persons with Autism spectrum disorder in the field of health care and habilitation (Autism-Europe, 2002) stress that
More than 1/3 (37.9%) never accessed any (re)habilitation programme
More than half (53.6%) of the (re)habilitation programmes were not provided any more after childhood
See <http://www.autismeurope.org/files/files/docpos08-uk.pdf>

Article 27: Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all

matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

‘The access to employment is very difficult as the majority of the companies reject a priori persons with disabilities. In that field the big multinational companies are setting the example by employing PwD.’
Bruno, Portugal

- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business;
- (g) Employ persons with disabilities in the public sector;
- (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
- (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Work and employment (Art. 27)

The convention commits ratifying states to recognizing “the right of persons with disabilities to work, on an equal basis with others,” including “the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.” Ratifying states “shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps.”

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND Reservations:

“Work and Employment - Convention Article 27 mainly The United Kingdom accepts the provisions of the Convention, subject to the understanding that none of its obligations relating to equal treatment in employment and occupation, shall apply to the admission into or service in any of the naval, military or air forces of the Crown.

Best and lower score on employment and unemployment for persons with different degree of impairment and for inactive group in 2002 (ANED 2008)

| | <i>Best score</i> | <i>Lowest score</i> | <i>EU average</i> |
|---|-----------------------------|-----------------------------|--------------------------|
| Employment rate considerable restricted | <i>Belgium 58,6%</i> | <i>Slovakia 7,4%</i> | <i>28,3%</i> |
| Employment rate restricted to some extent | <i>Sweden 71,7%</i> | <i>Romania 38,0</i> | <i>61,7%</i> |
| Unemployment rate - all degree of impairment | <i>Hungary 1.3%</i> | <i>Germany 8,7%</i> | <i>5,4%</i> |
| Inactive Persons with disabilities | <i>Sweden 21,6%</i> | <i>Hungary 87,2%</i> | <i>45%</i> |

Source: LFS special ad hoc module, 2002 and Applica & Cesep & Alpha-metrics, 2007

Note: best score is highest employment rate, lower unemployment rate and lowest rate of inactivity

The opportunities in Europe to find a job for PwD are restricted, for Woman with disabilities more. See report of ANED (2008)

<http://www.disability-europe.net/en/themes/Employment/Employment%20reports%20overviewEN.jsp>

Article 28: Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- (d) To ensure access by persons with disabilities to public housing programmes;
- (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Adequate standard of living and social protection (Art. 28)

The convention commits ratifying states to recognizing “the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.” Ratifying states must ensure “equal access (...) to clean water services, and (...) ensure access to (...) services, devices and other assistance for disability-related needs,” “access (...) to social protection programmes and poverty reduction programmes” and “access (...) to assistance from the State with disability-related expenses (...), to public housing programmes (...) [and] to retirement benefits and programmes.”

Reduce welfare benefit produce negative impact on health condition

LE MONDE | 26.06.10 | by Paul Benkimoun

Cutting social welfare by the European governments, for reducing deficit of public budget, is not only an economic issue, but produce a augmentation of mortality. A David Stuckler (Oxford university), Sanjay Basu (general hospital of San Francisco) and Martin McKee (London School of Hygiene and Tropical Medicine), in a study editing on *British Medical Journal*, have build a mathematical model on the variations between social budget (as define the OCDE) and data on mortality in 15 countries of EU from 1980 and 2005.

Any augmentation of 100 US\$ (91 Euro) per individual from the gross national product is associated in significant mode to a decrease of 0,11% of the mortality. An equivalent reduction of the social budgets produce a reduction 7 times higher (0,80%) of mortality.

An increase of 100 dollars per individual of the social budgets (sanitary costs excluded) reduce of 2,8 % the death related to alcool, of 1,2 % the cardiovascular mortality, of 0,62 % the death for suicide and of 4,34 % from tuberculosis. A growth of 100 dollars of the sanitary costs per individual cause a diminution of 0,82 % of cancer mortality, of 0,28 % of death from cardiovascular disease, and of 3,15 % for suicide. A reverse, the death related to alcool and tuberculosis increase respectively of 0,97 % and of 2,11 %.

Paradoxe? Non, because these two causes of mortality are related to poverty and are much sensitive from the protection of the social budgets then sanitary costs. The authors calculate that *“the sanitary programmes and social seems as the determinants important of future of the population, this fact is to take in account in the actual economic debate”*.

Article 29: Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(I) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(II) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(III) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(I) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(II) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.



March for the peace Perugia-Assisi (Italy) (Archive DPI-Italy)

MALTA

Interpretative statement and reservation made upon signature:

(b) Pursuant to Article 29 a) (I) and (III) of the Convention, while the Government of Malta is fully committed to ensure the effective and full participation of persons with disabilities in political and public life, including the exercise of their right to vote by secret ballot in elections and referenda, and to stand for elections, Malta makes the following reservations:

With regard to (a) (I) At this stage, Malta reserves the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned.

With regard to (a) (III) Malta reserves the right to continue to apply its current electoral legislation in so far as assistance in voting procedures is concerned.”

The participation of persons with disabilities in political life is complex, because the barrier and obstacles they meet. See

http://www.personal.ceu.hu/staff/Gabor_Toka/Papers/DisabilitiesParticipation.pdf

For persons with intellectual disabilities or psycho-social disabilities more, see

<http://www.fra.europa.eu/fraWebsite/attachments/Right-to-Political-Participation-100610.pdf>

Article 30: Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- (a) Enjoy access to cultural materials in accessible formats;
- (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
- (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far

as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

- (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- (d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
- (e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.



Ramp in the Forbidden City in Beijing (China) (Archive DPI-Italy)

A European research on access to culture (2004) made by the Centre for Public Policy, Northumbria University, Newcastle upon Tyne, UK suggests that the groups most seen as at risk of cultural exclusion are those who are financially and socially disadvantaged, young people, disabled people, immigrants and refugees. See

http://ec.europa.eu/employment_social/social_inclusion/docs/studyculture_en.pdf

Access to the sport is an important issue, see http://assets.sportanddev.org/downloads/34_sport_in_the_united_nations_convention_on_the_rights_of_persons_with_disabilities.pdf

Article 31: Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

- (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
- (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Statistics and data collection (Art. 31)

Collection of statistics and data related to the aims of the Convention contributes to building a different view of the conditions of people with disabilities. The Convention requires ratifying states "to collect appropriate information (...) to enable them to formulate and implement policies to give effect to the present Convention." It is important to establish a new data collection and organization methodology based on the survey of discrimination and unequal opportunities in access to goods, services and rights. "The informa-

tion collected (...) shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations (...) and to identify and address the barriers faced by persons with disabilities in exercising their rights." It is equally important that the processing and assessment of these data be tied to the monitoring of the Convention and the development of policies aimed at people with disabilities. It is useful to promote research to highlight the fact that people with disabilities must be able to take advantage of actions for both the development assistance and the eradication of poverty.

The data and statistics on condition of persons with disabilities are frequently poor and based on an approach focused on the interests of the states (how many money spend for PwD).

A research of ANED (2009) identify some available indicators, see

<http://www.disability-europe.net/en/themes/Monitoring%20rights/UN%20overview%20reportsEN.jsp>

Article 32: International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

- (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
- (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- (c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

In the study on EC Development Cooperation (2010) is stressed that “differences in impairment prevalence between countries have major implications in particular for the way disability is viewed in the country and the way persons with disabilities are (or are not) included in development. People with mobility impairments but with all their cognitive and sensory functions intact are more likely to form self-help groups, and are more easily integrated into education and jobs, than those with communication and intellectual impairments. See

<http://cms.horus.be/files/99909/MediaArchive/Members%20Room/Final%20Study%20Disability.pdf>

Article 33: National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention.

When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

National monitoring systems (art. 33)

The Convention requires ratifying states to create a disability policy monitoring system by designating “one or more focal points” and to “give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.” A monitoring system based on data collection related to the application of the Convention allows the state to be more directly committed to developing a Disability Action Plan, a vital instrument for supporting disability policies. This action plan should be linked to national development plans or the PRSP. Here, as elsewhere, “persons with disabilities and their representative organizations (...) shall be involved and participate fully in the monitoring process.”

System of monitoring the respect and implementation of Human Rights of PwD is a new challenge introduced by CRPD. The OHCHR has elaborated a study about implementation of CRPD, see <http://www2.ohchr.org/english/issues/disability/HRCResolution79.htm>

Article 34: Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as “the Committee”), which shall carry out the functions hereinafter provided.
2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.
3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.
4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representa-

tion of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emol-

uments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

International monitoring (Arts. 34-40)

The Convention institutes the Committee on the Rights of Persons with Disabilities, with the task of receiving, examining and making suggestions and general recommendations for the national reports on the application of the Convention, establishing guidelines for the contents of reports, assisting states in the correct drafting of reports and requesting the intervention of other specialized agencies where necessary. Where a state has not presented a report it can press the non-complying country, to the point of examining other reports from that country. The Committee submits reports on its activities every two years to the General Assembly and the Economic and Social Council, in which it "may make suggestions and general recommendations" (Art. 39). A country's movement of people with disabilities, where it has experts with international experience in disability and human rights, can ask the government to present its candidature to the international Committee.

Article 35: Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to

the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

From 2009 the UN Committee on the Rights of Persons with disabilities have elaborated a monitoring manual to prepare the report of the States Parties to monitor and implement the CRPD, see

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

Article 36: Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and

other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

National reports (Arts. 35-36)

The Convention commits every ratifying state to presenting to the United Nations "a comprehensive report on measures taken to give effect to its obligations (...) and on the progress made" towards adopting the rights included in the Convention. The first report must be presented within two years of ratification and subsequent reports at least every four years after that. Ratifying states, in preparing these reports, "shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations" (Arts. 35 and 4, subsection 3). Should organizations of people with disabilities not consider their government's report complete, they can present their own supplementary report.

Article 37: Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38: Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

- (a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate.

The Committee may invite the specialized agencies and other competent

bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39: Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

Article 40: Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

Article 41: Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42: Signature

The present Convention shall be open for signature by all States and by

regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43: Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44: Regional integration organizations

1. “Regional integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention.

Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to “States Parties” in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Ratification process

The ratification process provides for the Convention to enter into force when 20 countries have ratified it, whereas for the Optional Protocol only 10 countries are required. Ratification involves signing

the Convention and Optional Protocol as well as an institutional process involving the approval of a national law - varying according to each country's institutional system - which adopts the Convention; then, it should be checked that the Convention fits with national legislation, and, if it does not, the latter will have to be modified. The Convention also recognizes the capacity of regional integration organizations, such as the European Communities, in the ratification process (Art. 44).

For the first time the EU has the power to ratify an international convention on Human rights. This decision will influence the legislation of the EU. The areas of competence of EU to apply the CRPD are the delegate competences included in the EU Treaties. The decision to ratify are taken in November 2009 and will be completed at the beginning of 2011, see

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1850&format=HTML&aged=0&language=EN&guiLanguage=en>

Article 45: Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.
2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

See the Map of Signatures and Ratifications of the CRPD in <http://www.un.org/disabilities/documents/maps/enablenap.jpg>

Article 46: Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

Article 47: Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals.

In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48: Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49: Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50: Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Countries and dates of ratification of the Convention

Algeria - 12 April 2009
Argentina - 2 September 2008
Armenia - 22 September 2010
Australia - 17 July 2008
Austria - 26 September 2008
Azerbaijan - 28 January 2009
Bangladesh - 30 November 2007
Belgium - 2 July 2009
Bolivia - 16 November 2010
Bosnia & Herzegovina -
Brazil - 1 August 2008
Burkina Faso - 23 July 2009
Canada - 11 March 2010
Chile - 29 July 2008
China - 1 August 2008
Cook Islands - 8 May 2009
Costa Rica - 1 October 2008
Croatia - 15 August 2007
Cuba - 6 September 2007
Czech Republic - 28 September 2009
Denmark - 24 July 2009
Dominican Republic - 18 August 2009
Ecuador - 3 April 2008
Egypt - 14 April 2008
El Salvador - 14 December 2007
Ethiopia - 7 July 2010
European Union - 23 December 2010
France - 18 February 2010
Gabon - 1 October 2007

Germany - 24 February 2009
Guatemala - 7 April 2009
Guinea - 8 February 2008
Haiti - 23 July 2009
Honduras - 14 April 2008
Hungary - 20 July 2007
India - 1 October 2007
Iran - 23 October 2009
Italy - 15 May 2009
Jamaica - 30 March 2007
Jordan - 31 March 2008
Kenya - 19 May 2008
(South) Korea - 11 December 2008
Laos - 25 September 2009
Latvia - 1 March 2010
Lesotho - 2 December 2008
Lithuania - 18 August 2010
Malaysia - 19 July 2010
Malawi-27 August 2009
Maldives - 5 April 2010
Mali - 7 April 2008
Mauritius - 8 January 2010
Mexico - 17 December 2007
Moldova Republic - 29 September 2010
Mongolia - 13 May 2009
Montenegro - 02 November 2009
Morocco - 8 April 2009
Namibia - 4 December 2007
Nepal - 7 May 2010
New Zealand - 25 September 2008
Nicaragua - 7 December 2007
Niger - 24 June 2008
Nigeria - 24 September 2010
Oman - 6 January 2009
Panama - 7 August 2007
Paraguay - 3 September 2008
Perù - 30 January 2008
Philippines - 15 April 2008
Portugal - 23 September 2009

Qatar - 13 May 2008
Republic of Korea - 11 December 2008
Rwanda - 15 December 2008
Saint Vincent & Grenadines - 29 October 2010
San Marino - 22 February 2008
Saudi Arabia - 24 June 2008
Senegal - 7 September 2010
Seychelles - 2 October 2009
Serbia - 31 July 2009
Sierra Leone - 4 October 2010
Slovakia - 26 May 2010
Slovenia - 24 April 2008
South Africa - 30 November 2007
Spain - 3 December 2007
Sudan - 24 April 2009
Sweden - 15 December 2008
Syrian Arab Republic - 10 July 2009
Tanzania (United Republic) - 10 November 2009
Thailand - 29 July 2008
Tunisia - 2 April 2008
Turkmenistan - 4 September 2008
Turkey - 28 September 2009
Uganda - 25 September 2008
Ukraine - 4 February 2010
United Arab Emirates - 19 March 2010
United Kingdom of Great Britain and Northern Ireland - 8 June 2009
Uruguay - 11 February 2009
Vanuatu - 23 October 2008
Yemen - 26 March 2009
Zambia - 1 February 2010

Optional protocol

Individual or group communications (Protocol Arts. 1-8)

The Optional Protocol contains further participation and checking instruments, and its ratification should therefore be strongly supported. Of particular significance are the individual or group communications that can be sent to the international Committee, which

then starts a procedure for checking the facts presented in the communication, up to the point of censuring non-complying states. This an instrument for individuals or DPOs to present complains to the Treaty Bodies of the CRPD.

The States Parties to the present Protocol have agreed as follows:

Article 1

1. A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Rights of Persons with Disabilities (“the Committee”) to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 2

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidential-

ly to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

Article 6

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Inquiries (Protocol Art. 6)

If the individual or group communications are verified, the international Committee can carry out an inquiry into the non-complying state. This process can make the actual conditions of the country's people with disabilities visible at a national and international level. Indeed, violating the norms of a United Nations Convention is considered more serious than violating national legislation, partly because of the international visibility that an inquiry causes.

Article 7

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 6.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

SYRIAN ARAB REPUBLIC Declaration:

The Government of the Syrian Arab Republic declares that it does not recognize the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") provided for in articles

6 and 7 of the Optional Protocol, in accordance with Article 8 of that Protocol, which provides that each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

Article 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

Article 11

The present Protocol shall be subject to ratification by signatory States of this Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of this Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

Article 12

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and this Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and this Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 13

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 14

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

Article 15

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 17

The text of the present Protocol shall be made available in accessible formats.

Article 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Countries and dates of ratification of the Optional Protocol

Argentina - 2 September 2008

Australia - 21 August 2009

Austria - 26 September 2008

Azerbaijan - 28 January 2009

Bangladesh - 12 May 2008

Belgium - 2 July 2009

Bolivia - 16 November 2009

Bosnia & Herzegovina - 12 March 2010
Brazil - 1 August 2008
Burkina Faso - 23 July 2009
Chile - 29 July 2008
Cook Islands - 8 May 2009
Costa Rica - 1 October 2008
Croatia - 15 August 2007
Dominican Republic - 18 August 2009
Ecuador - 3 April 2008
El Salvador - 14 December 2007
France - 18 February 2010
Germany - 24 February 2009
Guatemala - 7 April 2009
Guinea - 8 February 2008
Haiti - 23 July 2009
Honduras - 16 August 2008
Hungary - 20 July 2007
Italy - 15 May 2009
Latvia - 31 August 2010
Lithuania - 18 August 2010
Mali - 7 April 2008
Mexico - 17 December 2007
Mongolia - 13 May 2009
Montenegro - 02 November 2009
Morocco - 8 April 2009
Namibia - 4 December 2007
Nepal - 7 May 2010
Nicaragua - 2 February 2010
Niger - 24 June 2008
Nigeria - 24 September 2010
Panama - 7 August 2007
Paraguay - 3 September 2008
Perù - 30 January 2008
Portugal - 23 September 2009
Rwanda - 15 December 2008
S. Vincent & Grenadines - 29 October 2010
San Marino - 22 February 2008
Saudi Arabia - 24 June 2008
Serbia - 31 July 2009

Slovakia - 26 May 2010
Slovenia - 24 April 2008
South Africa - 30 November 2007
Spain - 3 December 2007
Sudan - 24 April 2009
Sweden - 15 December 2008
Syrian Arab Republic - 10 July 2009
Tunisia - 2 April 2008
Turkey - 28 September 2009
Turkmenistan - 10 November 2010
Uganda - 25 September 2008
Ukraine - 4 February 2010
United Kingdom of Great Britain and Northern Ireland- 7 August 2009
Yemen - 26 March 2009

X. The Situation of People with Disabilities - monitoring

Available statistical data

Underline the importance of statistics concerning disability, which give the opportunity to know and monitor the status of actions, policies and legislation in a country. Illustrate the condition of the people with disabilities of the country in various areas related to rights using the available data, publications and reports.

Therefore the concept of health-illness or health-handicap doesn't only refer to the medical-scientific evaluation (the two words "Spina Bifida"), but it refers to the complete person, to the values in which he or she believes, to the daily routine, to one's own preferences and interests.

*And my thoughts go directly to my paediatrician, who often asked me about what I would do in my future. Sara, 22, Italy
(in <http://www.ifglobal.org/en/saras-story.html>)*

Presently the data available is focused mainly on medical conditions or on benefits received from public authorities. The new approach of data collection introduced by the Article 31 of the CRPD ("to identify and address the barriers faced by persons with disabilities in exercising their rights") is a challenge for the future. Having accurate information about the barriers, obstacles and discrimination that PwD meet in the society is essential for the development of appropriate strategies and policies to promote, protect and implement the CRPD.

In this sense innovative research to know the real condition of persons with disabilities is extremely important.

An innovative research, based on an emancipatory approach, is being developed in India, in the Mandya district, a rural area near Bangalore. The research involves people with disabilities as researchers and covers all areas of barriers and discrimination, see <http://www.aifo.it/english/>

In the next years 60 countries will introduce some ques-

tions related to disability in the national census. The UN have developed specific attention on collecting data on persons with disabilities, see <http://unstats.un.org/unsd/demographic/sconcerns/disability/>

National disability policies

Each country has policies, legislation and actions towards the people with disabilities that must be up-dating on the base of the CRPD implementation. Important is know and discuss the working agenda at national level, highlighting the interrelationships with the contents of the Convention.

For monitoring the CRPD is necessary have a clear vision of the policies and programmes related to persons with disabilities. For a good example see Australian experience <http://www.wwda.org.au/govtdis.htm>

The role of people with disabilities movement

The organisations of people with disabilities plays an important role to promote, protect and monitor CRPD, present its evaluations of national policies and the high-priority requirements that arise from them in the agenda.

The role of persons with disabilities and their representative organizations are stressed in various articles of the CRPD (preamble o); art. 4, par. 3; art. 7, par. 3; art. 21; art. 29; art. 32, par. 1; art. 33, par. 3; art. 35, par. 4.

At international level the slogan of the movement of persons with disabilities is “Noting about us, without us”. See the mains DPOs web site

<http://www.internationaldisabilityalliance.org/>

www.dpi.org

<http://www.inclusion-international.org/>

<http://www.wfdeaf.org/>

<http://www.wfdb.org/>

<http://www.wnusp.org/>

<http://www.worldblindunion.org/en/>

<http://www.edf-feph.org/>

XI. D17 Report on ICF and International Human Rights

This document has been developed based on a paper by Alves, I.F., Fazzi, L.B., Griffo, G., entitled 'Human Rights, UN Convention and ICF: collecting data on persons with disabilities' submitted to the American Journal of Physical Medicine and Rehabilitation in 2010.

Executive summary

This paper is an outcome of the work developed by the Italian National Council on Disability (CND), a disabled person's association (DPO) which took part in the elaboration of the United Nations Convention on the Rights of Persons with disabilities. It is one of many activities that aim to bring together the work of the scientific community and the "user's" organisations (DPO's) by sharing the experience on the field of Human Rights and exploring questions about the use and application of ICF to individuals and communities.

The concept of disability has evolved from intrinsic and one-dimensional to reflecting an interaction between the individual and contextual factors. A movement of universal rights for all human beings accompanied this change.

The UN Convention on the Rights of Persons with Disabilities (United Nations, 2006) is a powerful tool for persons with disabilities as it situates disability rights in a wider field of human rights. Ninety-six countries have ratified this convention, hence implementing and monitoring of the CRPD is a priority.

However, this requires a new approach to collecting data 'to identify and address the barriers faced by persons with disabilities in exercising their rights' (United Nations, 2006).

As it takes into account barriers and facilitators in the environment, the International Classification of Functioning, Disability and Health (ICF), in combination with a human rights approach, could be a useful tool providing data that could be disaggregated to help assess the implementation of the Convention.

The Concept of Disability

The concept of disability has been widely explored by numerous authors in various fields. In this article, we will briefly describe the four main paradigms associated with the concept of disability: medical, social, charity and human rights model. The biopsychosocial model presented in the International Classification of Functioning, Disability and Health (ICF) will also be briefly discussed.

The medical model, 'views disability as a problem of the person, directly caused by disease, trauma or other health condition, which requires medical care provided in the form of individual treatment by professionals', curing is the main aim of approaches situated within the medical model and hence the medical care is the central aspect to be monitored and enhanced (World Health Organisation, 2001).

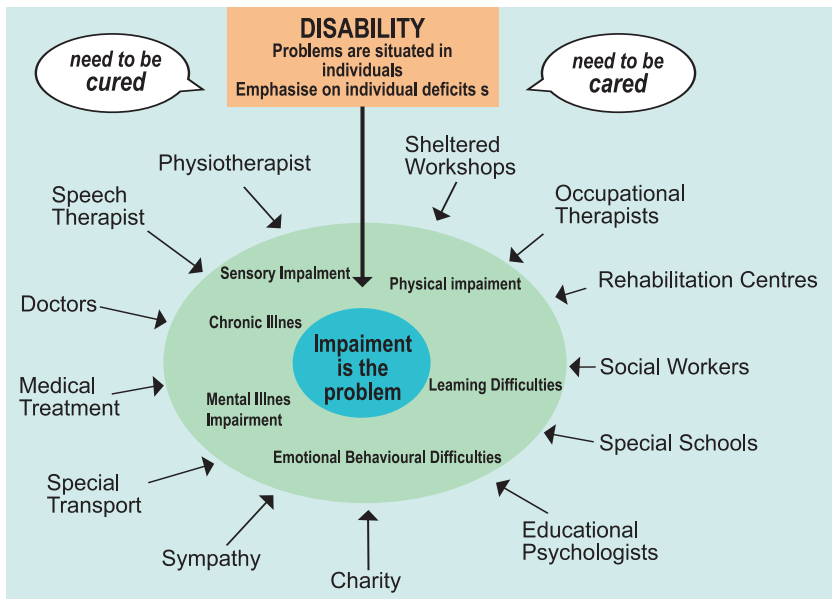


Figure 1: Medical model of disability (Yokotani, 2001)

However, nowadays it is widely accepted that 'often citizens, including those with disabilities, face discrimination and social exclusion because of the environment which is not suitably adapted to their needs, rather than because of their disability or specific characteristic' (CEP-CMAF and

European standing conference of co-operatives, 2007, Schiek et al., 2007). The social model, developed in the U.K. as response to the medical model (Union of the Physically Impaired Against Segregation and The Disability Alliance, 1975, Oliver, 1990), clearly differentiates between impairment and disability, considering the latter a ‘socially created problem’ which ‘is not an attribute of an individual, but rather a complex collection of conditions, many of which are created by the social environment’ (World Health Organisation, 2001). Although the social model has been challenged for ‘ignoring factors relevant to the person’ (Fougeyrollas and Beauregard, 2001), it should be accepted as an empowering paradigm for persons with disabilities (PwD).

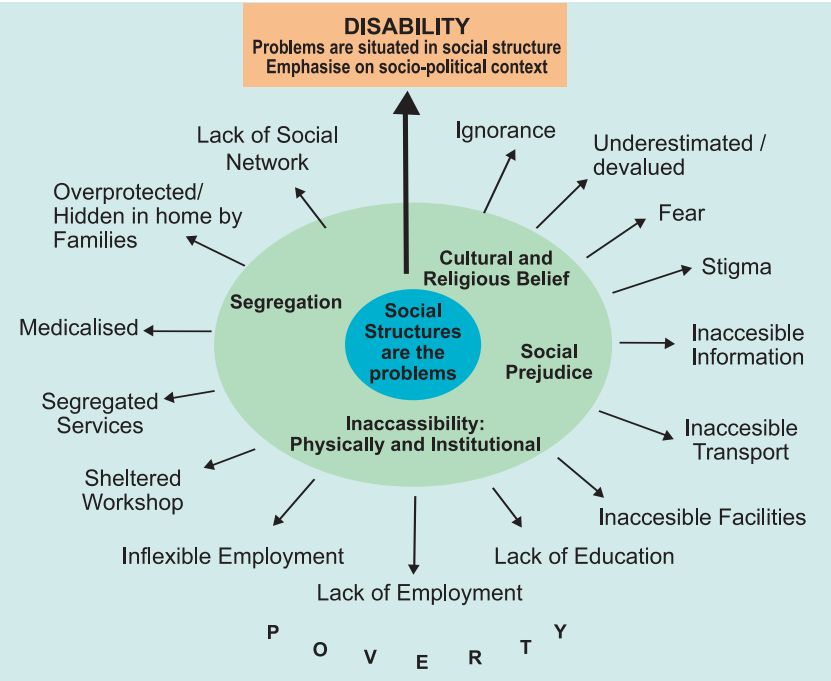


Figure 2: Social Model of disability (Yokotani, 2001)

The ICF’s bio psychosocial model of disability takes into account the interaction between an individual and environmental factors (World Health Organisation, 2001). Even having some limitations, it symbolizes a great improvement, as it demands people working in the two extreme

frameworks, medical or social, to recognize the importance and incompleteness of both to conceptualize disability.

The “charity” approach to disability is also worth mentioning, even if less has been written about it, it still dominates praxis nowadays. People with disabilities are faced as victims of impairments and beneficiaries of charity - for which they should be grateful (Harris and Enfield, 2003). In fact, ‘major world religions and ethical systems are marked by injunctions to take care for and protect persons with impairments or who were otherwise in need’ (Safford and Safford, 1996). This is associated with creating relationships of high dependence, in which persons with disabilities have low decision-making capacity.

On the other hand, the Human Rights Based Approach (HRBA) presents a change in discourse from needs to rights. Disability, like the ‘realization of human rights’ (Bickenbach, 2009), becomes a political issue (Baxter, 2004). If medical treatment and rehabilitation are key for PwD in certain situations (e.g. acute), this is not the case in the case for numerous PwD (e.g. with chronic conditions) who need to be habilitated and empowered (i.e. strengthen their capabilities, be aware of their entitlement to equal opportunities and non-discrimination for example through peer counselling (Barbuto et al., 2007)). The HRBA, which has been examined by some authors (Bickenbach, 2001, Katsui, 2008), can be linked to the UN mission to ‘reaffirm faith in fundamental human rights, in the dignity and worth of the human person’ (United Nations, 1945), namely through the development of a Convention on the rights of persons with disabilities. This empowers persons with disabilities, who now have the recognition of their rights as human beings in an international convention, signed and ratified by numerous countries (147 Signatories, 96 Ratifications).

This convention affirms that ‘disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others’ (United Nations, 2006).

Human Rights and Persons with Disabilities

‘No one agency owns human rights. It is the mission of the entire UN system’ (High Commissioner for Human Rights, 2003)

Nowadays, all the UN agencies, such as the International Labour Organization (ILO), the United Nations Educational, Scientific and

Cultural Organization (UNESCO), United Nations International Children's Emergency Fund (UNICEF), and the World Health Organization (WHO), have a concern about disability issues.

Human rights are inherent to all human beings, without discrimination. They are often guaranteed by international law (e.g. treaties, general principles), which 'lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups' (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2010). At the European level, 'in recent years there has been a shift, towards a more generic, rights-based approach, (...) in which the social inclusion of disabled people now figures more explicitly than before' (Priestley, 2005). Example of this is the recent 'European Disability Strategy 2010-2020: A Renewed commitment to a Barrier-Free Europe' (European Commission, 2010b) and implementation plan (European Commission, 2010).

Non-discrimination and equality of opportunities are often presented as the two pillars to guarantee the rights of persons with disabilities. Non-discrimination is a crosscutting principle in international human rights law, which is present in all the major human rights treaties (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2010).

The principle of equality features in the majority of contemporary constitutions, some by expressly forbidding discriminations towards persons with disabilities (Germany, Austria, Finland, Switzerland, Canada, Brazil, South Africa), others by referring to promotion and social protection (Brazil, Bulgaria, Canada, Colombia, Poland, Portugal, Spain, Switzerland) (Flores, 2007). However, formal equality is not enough, there must be a substantial equality of results, of treatment, of opportunities (Corsolini, 2007).

The CRPD and the need for data collection

Given that 'in order to make people count, you need to count people' (Chatterji, 2007), the invisibility of persons with disabilities is considered problematic. Several authors have written about the difficulty to quantify the number of persons with disabilities (Yokotani, 2001, Lynch, 1994), between and within country variations can be due to a variety of reasons, starting from what is considered a disability to the

existence of data from population surveys, manipulation of existing data, and personal decision of not disclosing this information (Coleridge, 1993, Lynch, 1994, Yokotani, 2001).

The CRPD establishes that data collected should focus on enabling countries to formulate and implement policies to address the barriers faced by PwD in exercising their rights (United Nations, 2006). More information on this topic can be found on the Enable website (Secretariat for the Convention on the Rights of Persons with Disabilities, 2010), developed by the Secretariat for the Convention on the Rights of Persons with Disabilities, which consists of staff of both the United Nations Department of Economic and Social Affairs (DESA), based in New York, and the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

Thus, it is not merely a need to 'improve the accuracy and comparability of estimates of prevalence of impairments and disability Europe-wide' (MHADIE, 2007). It is a matter of creating indicators to document and monitor the impact of barriers in the lives of PwD. Barriers that can be psychological, educational, family-related, cultural, social, professional, financial or architectural (Council of Europe, 2006). Hence, data collection from a purely clinical point of view will not suffice, and other innovative methods need to be developed.

The ICF and data collection

The World Health Organization definition of health: 'a state of complete physical, mental and social well-being and not merely absence of disease or infirmity' (World Health Organization, 1946) is not fully reflected in the ICF given that it focuses on 'individuals (with health conditions)'. This way, the ICF model's claim of 'universal application' (World Health Organisation, 2001) is only applicable in the sense that 'disability is not something that only happens to a minority of humanity', since 'every human being can experience a decrement in health and thereby experience some degree of disability, it a universal human experience' (World Health Organisation, 2008). Hence, the ICF mainstreams the concept of experiencing disability, which does not mean that the classification is to be applied to all citizens.

The diagram below shows the 'Interactions between the components of ICF' (World Health Organisation, 2001, p. 18):

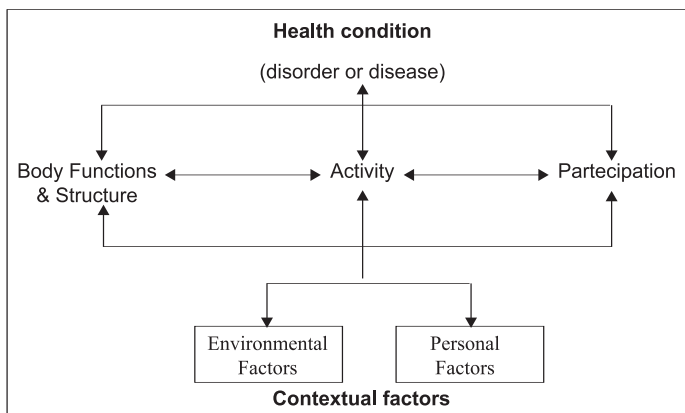


Figure 3: 'Interactions between the components of ICF' (World Health Organisation, 2001)

Below an alternative presentation of the ICF model is shown. This appears to respect to a further extent the human rights approach to disability in the sense that health conditions, environmental and personal factors are to be faced as interacting descriptor aspects of individuals' lives. Those are further described through individual's body functions and structures as well as activities and participation.

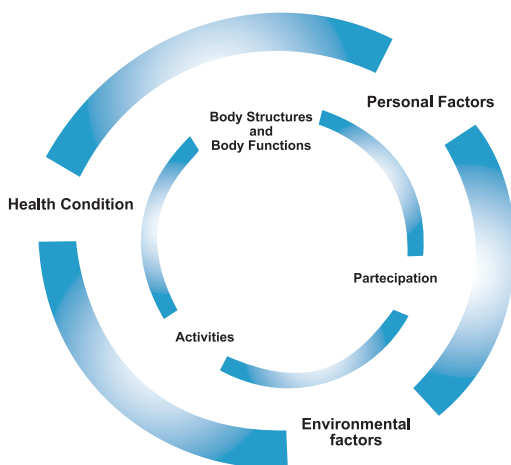


Figure 4: An alternative 'Eco-interaction' between ICF components

The ICF aims to classify human functioning (body functions, body structures, activities and participation), which denotes the positive aspects of the interaction between as individual (with a health condition) and that individual's contextual factors (environmental and personal factors)'(World Health Organisation, 2001).

However, a functional description based on the ICF does not take into account unequal treatment, such as for example a woman with a physical disability not having access as other women to breast cancer screening. From the point of view of the CRPD, the concept of discrimination is relevant when collecting data on the lives of PwD and monitoring respect for human rights. The CRPD faces PwD as part of the human spectrum or diversity and the functional limitation is one of the characteristics that define a person, along with ethnicity, culture, religion, gender, life history. On the other hand, the ICF still appears to maintain a notion of PwD's functioning as differing from a norm.

The ICF does take onboard concepts introduced by The Standard Rules on Equalization of Opportunities for Persons with Disabilities (United Nations, 1993), further developed on the CRPD, such as full participation and the need for research to develop adequate planning, policies and legislation. This way ICF can provide a common language for multidisciplinary work in fields highlighted on the CRPD (e.g. habilitation and rehabilitation, access to information, health and medical care, support services, accessibility, personal mobility, education, work and employment, independent living, participation in political, public, cultural life, recreation, leisure and sport).

Having participation as a key concept, the ICF does not capture the notion of social inclusion that is central for the life of every individual, especially those with disabilities, who are often excluded. Therefore, when creating a functional profile of an individual, it would be relevant to be able to convey aspects such as processes of empowerment/impoverishment. The history of life of two individuals with the same health condition can be totally opposing depending on these processes throughout their lives and a functional profile based on the ICF will not show past barriers that caused poverty (social, economic, of resources, and competences).

Additionally, due to the neutral character of ICF, it is also important to consider who is collecting information and on what conditions, for example when filling in checklists. Definitely, for someone to be able to use ICF it is essential to have a sound knowledge of its structure and

contents: appropriate training can generally ensure this. On the other hand, ensuring a good use of ICF (guaranteeing the respect for the personal experience and inherent dignity of PwD) is a much more complex task because 'in order to establish a dialogue with someone, you need to relate to him or her as a person first, by recognizing equal values of dignity' (Le Eli-Che, 2007).

Conclusions

The challenge of collecting data for better policy development creates the problem linked to the fact that 'There is no single, correct solution to a policy problem any more than there is a single correct perception of what that problem is.' (Yanow, 1996) and that 'policies are never value-free or neutral and are informed by wider concerns and questions' (Barton, 2006).

The ICF can be a valuable tool for those working in the field of disability, but as any other tool can be used in positive and negative ways, depending on who is using it and on the purpose. Thus, and since we are referring to actions that impact with person's lives it is important to bear in mind human rights and ethical principles.

The individual perspective (D'Alessio, 2008) still maintained, and the fact that personal factors and histories of life are not captured by the ICF framework are challenges when aiming to use the ICF as a tool for CRPD monitoring processes. Monitoring is 'measuring progress toward justice for PwD' (Rioux and Pinto, 2009) and thus is expected to be an empowering activity as it 'provides a voice to marginalized people and enhances public awareness by documenting abuses and violations' (Rioux and Pinto, 2009). One could say that the main difference between monitoring and collecting data through the ICF is collecting data about the human rights of PwD versus collecting data about PwD.

It is the authors' opinion that a flexible view and use of the ICF can help in the process of monitoring, but if the focus remains on barriers and facilitators from an individualistic point of view, it will not be possible to show the consequence of different treatments on the capacity of the person, in impoverishment and empowerment.

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XII. D18 Report on Social Justice, Persons with Disabilities and ICF

Historical and cultural contextualization of the ICF

The ICF model of disability is the result of the evolution of the concept of disability in society and international debates. Such a concept is still in evolution, as the UN Convention on the Rights of Persons with disabilities (CRPD²) underlines. In the course of time in fact the contextualization of who a person with disabilities is has undergone great changes. In fact if we analyze the theme of disability in its socio-historical implications, numerous elements should be examined, that are intertwined among themselves, producing a real “ideology”. Different ideological and socio-cultural elements are intertwined with the concept of disability, to the point that the reconstruction of this particular significance of meanings is complex and articulated. In fact there are various approaches to the theme that can be synthesized in some cultural aspects that are strictly related among themselves: sociological/economic ones, linguistic/semantic ones, defining/nosographic ones, administrative/identifier ones, global/relational ones, systematic/political ones. Each one of these binomials – but others can be added – corresponds to a specific reflection that cannot be developed completely here. We will only make a few references in order to clarify the historical evolution of the concept of disability, referring to a conspicuous book *Disability studies* that was developed in various European and American universities³.

The first consideration starts from the place and social role of persons with disabilities⁴. The Greeks and the Romans, societies of warriors that allowed the infanticide of children with evident malformations or fragility, did not leave space to the survival of persons with disabilities, the only exception, even if rare, was the belonging to managerial class. The same Aristotle claims that whoever was born deaf became senseless, without reason and incapable of understanding, since communication

² CRPD, Preamble and): “disability is a concept in evolution”.

³ A list of university and research centres in the field of *disability studies* is traceable in the following web-sites: http://en.wikipedia.org/wiki/Disability_studies, Among the most famous magazines we must mention the historical *Australian Disability review*, the English *Disability and society*.

⁴ The main part of the information is taken from the book, still in the course of being published, of Giovanni Padovani, *Storia di trattamento sociale delle persone con disabilità*, 2008. See too C. Barnes (1997). “A Legacy of Oppression: A History of Disability in Western Culture” in “Disability studies: Past, Present and Future”. Leeds, 1997.

was deemed essential to knowledge. Even the role of religion has not always contributed in overcoming the negative stigma that affected persons with handicaps⁵.

The medieval period accentuated the negative vision that built a direct correspondence with evil (often the devil) and ugliness. The iconography of the era linked them to evil and gave these persons the role of mendicants⁶. During the same period the *lazzarettos*, places outside the city walls where persons with infective diseases gathered, a model of segregating approach to the condition of ill people, that influenced the models of treatment, both medical and of “social protection”.

The first vague and uncertain definitions linked to persons with disabilities were born in medical-welfare contexts and testify how the negative stigma is strongly present: crippled, suspicious, crooked, hunchbacks, lame, etc. The industrial revolution produces a model of human beings linked to production, to which persons with any kind of handicap, physical or mental, could not correspond. The thirty year war (1618-48), creating a conspicuous number of ex-servicemen under the flag of the monarchs and lordships that returned home injured, mutilated and handicapped, produced the establishment of institutions⁷. First the *working houses* in England, then public and private institutions, built on the cultural model of medieval *lazzarettos*, welcomed every type of socially undesirable person, among which persons with disabilities. To the segregation in places separated from the society, forms of social control must be added. In these institutions different undesirables live together: ill, invalid, socially “deviant” persons (girls, mothers, slight heretics, etc.), politically disturbing (political objectors, etc.). At the same time they were defined as different treatments according to their social rank, whilst particular categories of persons with disabilities received different treatment (veterans for example, gathered in *Les Invalides* of Paris).

During the ‘700s a true science of segregation and segregating places were born⁸. Mental hospitals and assistance institutions were born and

⁵ See for ex. Levitico, 21. 16-20; the positions of Martin Lutero that speaking of those born with genetic defects, says: “Take retarded children and throw them in the river”; the theory of Buddhist reincarnation that attributes a value of punishment to the condition of disability, caused by a insufficiently worthy previous life.

⁶ See for example the images of Brugel.

⁷ Foucault, M. *Storia della follia*, Milano, 1963

⁸ Famous as archetype of places of segregation is the prison of Jeremy Bentham denominated Panopticon (1791), where the conformation of space and potentiality for controlling was “*a new way to obtain mental power on the brain, in a manner and quantity that has never been seen before*”. All the typologies of architectural places of segregation are in inspired by this model.

developed, mainly of a religious character, where medical and para-scientific practices and strong social control were mixed⁹. In the second half of the '800s legislations for social protection of labourers (pioneer is the regime of social insurance, in Bismarck's Prussia) that defined a new approach to invalidity acquired on the workplace, to which appropriate indemnification is given. The first world war sees 8.500.000 injured veterans that return to their country and need to have social protection, covered by the granting of subsistence pensions. These historical and social elements, together contribute to consolidate an understanding of the condition of persons with disabilities prevalently medical and welfare. The Nazi campaigns for the extermination of persons with disabilities, considered useless and costly lives for society, was the first proof of the successive holocaust of the Hebrews, but were occulted and hidden up until the rediscovery in the '70s – as if they were a lesser evil, maybe justifiable of the horrors of the third Reich¹⁰. The second world war and the various successive local wars, cause, for all the servicemen that return traumatized or however with functional limitations, conditions of social disadvantage and lack of equal opportunities for persons with disabilities, progressively increasing a legislation of social protection that progressively broadened the field of beneficiaries and other categories (from invalids of war and work to civil invalids) and it dealt with giving access not only to interventions of care and assistance, but also interventions for the support of civil rights (rehabilitation, work, education). This intertwining of treatment, vision and approach to disability is commonly defined as the medical/individual model. Such a model, that was developed during the centuries and crystallized in education and policies, attributes to persons with functional limitations the “blame” of not being able to walk up a flight of stairs, of not reading with their eyes, of not speaking, of not having relationships with other persons with an open heart. In the '70s, with the help of the movement for civil rights, the social model of disability¹¹ is contrasted, which attributes to society

⁹ Foucault, Michel. *Surveiller et punir: Naissance de la prison*. Paris, 1975

¹⁰ “Nazi ‘Euthanasia’ Programs” in Dieter Kuntz, ed. *Deadly Medicine: Creating the Master Race* by Michael Burleigh. United States Holocaust Memorial Museum/University of North Carolina Press, 2004. Gallagher, H. G. (2004). *Holocaust: Disabled Peoples*. In *Century of Genocide: Critical Essays and Eyewitness Accounts*, edited by Samuel Totten, William S. Parsons, and Israel Charny, 205-230. New York, 2004. Evans, S. (2004) *E. Forgotten Crimes: The Holocaust and People with Disabilities*. Chicago, 2004.

¹¹ See *The individual and social models of disability* by Mike Oliver. Paper presented at Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians on People with established locomotor disabilities in hospitals, Monday 23 July 1990. From the same authors *The Politics of disablement* (1990).

the responsibility of the social exclusion of persons with disabilities, that has produced obstacles, barriers and limitations of access to rights.

During the same period movements against the institutionalization of persons with disabilities were established, hit by the social stigma¹² and for independent living¹³.

This elaboration process of new heuristic instruments of the realities that could be capable of describing the way society treated persons with disabilities in a different manner, has obtained a first partial result influencing the classification ICIDH of the WHO (1980)¹⁴, that recognized on a "scientific" level that the situation in which persons with disabilities lived should have been treated on the basis of a disability model centered on a new cultural and social approach, even if it is still erroneously invalidated by a medical determinism. The successive evolution of the international debate within the United Nations made the necessity to create a cultural instrument based on the equal opportunities of persons with disabilities, emerge, addressing themselves to societies which are capable of welcoming everybody. Therefore the Standard Rules for the equalization of opportunities for persons with disabilities (UNO, 1993)¹⁵ were born. In this the equal opportunities of persons with disabilities is defined: *"24. The term "equalization of opportunities" means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities. 25. The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation. 26. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services"*.

This new approach imposed a revision of the ICIDH, that was achieved with the approval on behalf of the Assembly of the World Health Organization of the International Classification of Functioning,

¹² Thinking about the movement for the closure of mental institutions, led by Franco Basaglia.

¹³ For documentation on independent living see the web-site: <http://www.independentliving.org/>

¹⁴ Organizzazione mondiale della Sanità. ICIDH. Bergamo, 1980.

¹⁵ The Standard Rules text is downloadable from the web-site: <http://www.un.org/documents/ga/res/48/a48r096.htm>

Disability and Health (2001)¹⁶, known with acronym ICF

The ICF, other than being a classification (which we will not analyze in this article), has constructed a model of approach to disability, defined bio-psycho-social (see table 1). In fact the ICF underlines the fact that disability is a social relationship dependent on the health conditions in which a person finds him/herself and the environmental and social conditions in which they carry out their activities. If these conditions do not take into account of the functional limitations of the person and do not adapt the life and relationship environment, barriers and obstacles that limit social participation are constructed. If, instead “facilitators” are introduced, that favour the enjoyment of spaces and opportunities that society puts at the disposal of its citizens, the functional limitations do not automatically become disabilities.

Table 1

| | | |
|---|-----------------------------|---------------------------------|
| InternationalClassification of FunctioningDisabilityand Health ICF 2001 – WHO | | |
| Conditions of health (illnesses/diseases) | | |
| Body Structures and functions (diseases) | Activities (limitations) | Participation (restrictions) |
| Environmental and social factors | | Individual factors |

Therefore, disability is not a subjective condition of the person, since it is not true that a limitation in the use of body function or structure always and in any case corresponds to a reduction of capacity and per-

¹⁶ See web-site: <http://www.who.int/classifications/icf/en/>

formance. In fact this depends on environmental, social and individual factors. In a library for example where there are no obstacles and architectural or communicative barriers and appropriate technological equipment was foreseen to access books and documents, a person in a wheelchair or a blind person can move freely and consult the library patrimony without difficulty. If however there are stairs, lack of tactile paths and lifts, computers not equipped with speech synthesizer and scanners, etc., those same readers would come across various types of obstacles and would not receive equal treatment as other readers.

The ICF model of disability represents a substantial step ahead to allow health and social operators that work in the disability field (but also other professional and social figures) to understand the relational and social nature of disability. But a model centered on medical etiology still exists, that describes functional limitations of a part of the body as an element which is separate from the capacity of adaptation of human beings. Moreover the photograph that the ICF produces of the condition of persons with disabilities is substantially static, not catching the dynamic aspects that actions of individual and social *empowerment* may produce. At the moment of its approval the approach based on the respect of human rights was not yet perceived in the international debate and it had to wait another 5 years to become a legal obligation of the states and international standards of reference with the International Convention on the Rights of Persons with disabilities of the United Nations (2006)¹⁷

The relationship between the ICF model of disability and that of the UN Convention

The Convention on the rights of persons with disabilities of the United Nations introduced a frame of reference based on human rights¹⁸, absent in the ICF model (see table 2). Lets analyze the differences. The first difference is in the description of the causes. The ICF emphasizes that it is a condition of health that causes a condition of potential disability, whilst the Convention, is based on general principles (article 3) among which “respect of difference and acceptance of persons with disabilities as part of human diversity” stands out. Whatever the cause of the functional

¹⁷ For the text see the web-site: <http://www.un.org/disabilities/convention/conventionfull.shtml>

¹⁸ Gaurier, B. avec Michel D.A. (2010) *Tous inclus! Reinventer la vie dans la Cité avec les personnes en situation d'handicap*. Paris, 2010.

limitation and whatever the nature, this is ascribable to human diversity. In reality a person with a spine injury that has caused him/her paraplegia, cannot be described only on the basis of his/her functional limitations, and the latter, even though they produce conditions of dependence on third parties (e.g. to get dressed, to move, to wash themselves, etc.), do not automatically produce a condition of disability. The lifestyle of this person, the courses of growth of awareness and of progressive ability to manage their lives and find solutions for carrying out different activities, make sure functional limitations are overcome by means of technological and human devices, of changes in the environment, the capacity of self-determination and live life autonomously and independently. In fact the element of impairment of the functional capacities of the body, interact with the subjective and social elements, many times producing resilience¹⁹ that is often confused with courage. In reality it is the capacity of acceptance of one's condition and adaptation to the life conditions that include that functional limitation in daily activities. It would therefore be more correct to define functional impairment as one of the characteristics of the person and non "the" characteristic to start from, otherwise risking to reduce that same person to that single characteristic. Everybody knows that Beethoven spent part of his life in a condition of deafness, still continuing to compose: nobody even dreams of analyzing Beethoven's condition starting from his deafness. His deafness in fact is only one of his characteristics, and all in all so unimportant (in fact Beethoven continued to compose) so as to not invalidate the image of a great composer. According to the model of the Convention, therefore, instead of speaking about sickness that strikes the structures and functions of the body, it would be more correct to use the term characteristic of the persons, based on human diversity that other than being ethnic, cultural, social, of life stories and of DNA, it is also physical and of functional capacity.

Even the description of the limitations that can prevent the carrying out of an activity is insufficient, because it does not take the unequal treatment into account. Using the ICF in an educational context, for example, it is not possible to identify if the student with disabilities attends an ordinary class or is segregated in a special class. A context of discrimination would therefore be included, that determines even the modality of parti-

¹⁹ In psychology, resilience is the capacity to face in a positive manner, traumatic events, to reorganize one's life when faced with difficulties. It is the capacity to rebuild oneself remaining sensitive to the positive opportunities that life offers, without losing one's own humanity.

cipation: in fact this can be carried out in a discriminatory context or in an inclusive context. Remember that discrimination is the different treatment without justification and that in literature on the matter, this different treatment corresponds to a violation of human rights²⁰. Another concept that enriches the ICF model is that of inclusion, parallel to that of participation. In fact participation can be activated both in segregational contexts and in ordinary environments, with very different valence. It is the case of lingering on contexts of insertion, integration and inclusion, to clarify the semantic implications, important for our discussion.

Table 2 (in blue the differences with the ICF model of disability)

| International Convention on the rights of persons with disabilities CRPD 2006 – UN | | |
|--|--|--|
| Human diversities (various causes) | | |
| Body structures and functions (characteristics) | Activities (limitations and Discriminations) | Participation Inclusion (restrictions) |
| Environmental and social factors | Individual factors | |
| Impoverishment/ Empowerment | Impoverishment/ Empowerment Habilitation | |

Insertion acknowledges the right of persons with disabilities to have a place in society, but it limits itself to inserting them in a place often separated from society (an institute or a special class for example) or in a passive situation, of dependence and care. The decision on where they should live and how they should be treated is not taken by the person

²⁰ *Lessico delle discriminazioni tra società, diritto e istituzioni*. A cura di Thomas Casadei. Presentazione di Paola Mancini. Reggio Emilia, 2008.

with disabilities and their families, in the case that they cannot represent themselves, but it depends on the decision of others (doctors, operators of public institutions, etc.) The insertion is often based on the charitable and welfare approach.

Integration on the other hand is the process that guarantees persons with disabilities the respect of their human rights within ordinary places, where all persons live, without changing the rules and the functioning principles of society and of the institutions that take them in. Behind this structure there is still an understanding based on the medical model of disability. The idea that persons with disabilities are special and must be supported by prevalently technical interventions still prevails (even if they became special only because of their exclusion from society). Integration is not a full acknowledgement of dignity and legitimacy. It is the person who must adapt him/herself to the already defined social rules. The person with disabilities still remains a guest of society which welcomes him/her with condescension. This is so true that it is based on the economic resources available, it is subject to parameters external to rights. If there is no money never mind rights.

Inclusion is the concept that prevails in the most recent international documents. The person with disabilities is considered a legitimate citizen and therefore holder of all rights, like the other citizens. , He/she is part of society and must enjoy all the goods, services, policies and rights. However it is acknowledged that society is organized in such a manner that it creates obstacles, barriers and discrimination, that must be removed and transformed. The person with disabilities reenters therefore in the community with full power, he/she has the right to participate in the choice on how society organizes itself, in its rules and its principles for functioning, which must be rewritten taking into account all members of society. In short, persons with disabilities are no longer guest of society, but an integrating part of it. Behind this concept there is the social model of disability based on the respect of human rights, that underlines the responsibility of society to create conditions of disability. Disability in fact, underlines the preamble of the Convention, "it is the result of the interaction between persons with handicap and behavioral and environmental barriers, that prevent their full and effective participation in society on the basis of equality with others", therefore it is a social relationship between the characteristics of the persons and the manner in which society takes it into account. Inclusion recognizes human diversity and includes it in the functioning rules of society, in the

production of its goods and in the organization of its services. The human right to be included does not depend on the available resources, but on the awareness that all human beings have the same rights.

The evaluation of the quality of inclusion therefore, is essential for the identification not only of the barriers and the obstacles, but also of the discriminations and lack of equal opportunities that society imposes on persons with disabilities²¹.

Finally a further difference is that of the use of the ICF in contexts of definition of the interventions of support to the conditions of persons with disabilities (individual projects). The information frame gathered by the ICF (often heavy in the accurate nosography of items) results substantially static, managing to take a photograph of the situation, but limiting itself to defining the obstacles and the barriers that limit the execution of the activities in an abstract manner. It seems that it is sufficient to overcome these limitations to reconstruct the full participation of persons with disabilities in social life.

In reality it is more complex, just because in the individual process of elaboration of the condition of disability, cultural factors intervene (see the following chapter on **The disability models and the ideas of justice linked to it**), physical elements (barriers), social (discriminations) and individual. The ensemble of these elements produce forms of impoverishment of persons with disabilities both in individual capacity and in social competences. Particularly important are the psychological factors that are linked to the acceptance of the negative social stigma, which persons with disabilities are subjected to.

In this sense, underlining that disability is a concept in evolution²², does not count only for the vision that society has of the condition of persons with disabilities, but takes on an important role in the subjective perception elaborated by persons who live in conditions of disability.

The processes of individual impoverishment can be in act and it is not enough to eliminate the physical barriers to participation, it means to produce an inverse process of growth of awareness of one's own condition and of progressive empowerment of the individual and social capacity of the subject²³.

Empowerment is an English word with two meanings: one linked to the

²¹ *ICF e Convenzione ONU sui diritti delle persone con disabilità. Nuove prospettive per l'inclusione.* A cura di Borgnolo, G. De Camillis, R. Francescutti, C. e altri. Trento, 2009.

²² Preamble e) of the CRPD.

²³ See Griffo G., L'empowerment base del lavoro delle organizzazioni di persone con disabilità in *Inserito Empowerment* pp. 1-2 in *Notiziario AP*, n° 3 (June/July), Anno XXII, Roma, 2006.

person, of reinforcement of capacities, the second social, of acquisition of power. And persons with disabilities need both reinforcement of their individual capacities, as well as acquisition of major power to decide on how society includes them, even through the organizations of persons with disabilities and their families.

It is undeniable that persons with disabilities suffer continuous violation of their human rights that often produce in them the perception of being inadequate, of being incapable of living in society due to their condition. To transform this perception is the first objective of *empowerment*: only being conscious of discrimination and oppression that society forces us to live with can we start a course of emancipation.

In the same direction of *empowerment* the experience of peer counselling²⁴ has grown and of training of autonomy and of support of freedom of expression, of the needs and desires of persons that can represent themselves in some fields of relational and social life. In Spain, Italy, Belgium, the United Kingdom, some associations of persons with disabilities and of parents realized significant experiences of training and empowerment. In a disability model these assessment elements of the real condition of persons with disabilities are important. The ICF ignores them, the CRPD identifies in article 26 (Habilitation and rehabilitation) self-help and the supply of services for habilitation. In table 3 we will develop the comparison between the ICF disability model and that of the CRPD.

Table 3

| ICF | CRPD |
|---|--|
| Medical etiology | Human diversity |
| Static vision | Dynamic vision |
| Not include Human Rights | UN CRPD oblige to respect Human Rights |
| Lacking data on the barriers | Monitoring system of the rights |
| Poor on individual factors | Centered on empowerment |
| Technical instrument with heavy nosographiesto be applied | Ample and universal cultural frame |

²⁴ Barbuto R., Ferrarese V., Griffo G., Napoletano E., Spinuso G. (2006). *Peer counselling (from vic-tims of the history to protagonists of the life)*. Lamezia Terme (Italy), 2006.

The theoretic consequences of the model of disability based on human rights

The Convention produces an essential transformation in the understanding of the condition of persons with disabilities. In fact it underlines the fact that, even before acknowledging their needs, it is necessary to start from the recognition of their human rights. The hierarchical inversion of the two concepts brings a descriptive clarity of what society's task is: to guarantee rights violated by barriers, obstacles and prejudice, from unequal and discriminatory treatment. It is starting from this new awareness, that the policies and the services must support the access to rights, by means of appropriate interventions of removal of those conditions that produce disability. Disability in fact is prevented both on the biological side, reducing the consequences of diseases, accidents and senescence, but also on the social side, removing obstacles and barriers, putting technical equipment and devices at their disposal, creating conditions that prevent discrimination and unequal treatment²⁵.

An ulterior element of enrichment of the ICF model is measured when the couple of concepts of impoverishment /*empowerment* and rehabilitation/habilitation are analyzed. In fact the social and environmental factors, including barriers, obstacles, discriminations, can produce impoverishment of the capacity and of the *performance* of persons with disabilities, limiting much more than their handicap, their individual and social ability. In fact every time that they face an obstacle or a barrier, every time that he/she is treated in a discriminatory manner, the person does not access an environment or does not enjoy a service and therefore loses knowledge and learning. Moreover every impediment that limits access to a right creates a consequent negative spinneret that further impoverishes social opportunities: if I do not continue my studies, for example, I cannot acquire a title of higher studies and when I access the labour market – negative for 80% of persons with disabilities in the world – I will have less opportunities of having a job and surely less remunerated, therefore I will have difficulty obtaining an autonomy, of having a house, of building a family...

Therefore intervening in order to recover full citizenship, in equality with other citizens, brings on an action of *empowerment*²⁶ of persons

²⁵ See the research commissioned by the European Commission *Study of Disability in EC Development Cooperation. Final report* by Coleridge, P., Simonnot, C. and Steverlynck, D. Bruxelles, 2010.

²⁶ The word *Empowerment* in English has two meanings: increase the individual capacity and give back power to who has lost it.

with disabilities and of their families, when they are minors and they cannot represent themselves on their own, to give them new competences and abilities and new decisional power on their life. In this way, finally, interventions on the person cannot be limited to rehabilitative actions, that is to actions aimed at the functional recovery of the person on the basis of an abstract health model (for example recovering straight posture for a person with a spine injury), but, once the best level of stabilization of the functional limitations is acquired, they must intervene appropriately, respecting the diversity of the characteristics of the person, with actions of habilitation (guaranteeing, in the previous example, the best use of wheelchairs for paraplegic/quadruplegic persons).

Empowerment regards the growth of awareness of what the condition of the person with disabilities is, through *peer counselling*; regarding the acquisition of independent living, through courses of individual capacitation and supply of appropriate devices; regarding support with personalized services; regarding the removal barriers and obstacles in the access to places, goods and services.

A recent innovative interpretation that develops this approach comes from Spain. Javier Romanach and A Palacios (2006) underline that the condition of disability must not be interpreted starting from a negative evaluation of the functional limitations of the person, nor should it be interpreted in a static manner as a deficit of the person, but it should become one of the characteristics of the person that joins itself, integral and combines with the other characteristics. The final result is a condition that becomes a “functional diversity” without negative connotations.²⁷

This new vision of how disability is produced has found even theorists that strongly underline the relational process between individual lifestyles, personal factors and environmental factors, underlining that fact that working on various factors very different results are obtained on the basis of apparently analogical conditions. The contribution of the theory of the “disability creation process” of Patrick Fougeyrollas²⁸ studied by the International Network on the Disability Creation Process (INDCP) is significant in this area.

Therefore the correct actions of support indicated in the Convention are “*comprehensive habilitation and rehabilitation services and pro-*

²⁷ Palacios, A., Romanach, J. (2006), *El Modelo de la Diversidad: La Bioética y los Derechos Humanos para alcanzar la plena dignidad en la diversidad funcional*. Madrid. 2006.

²⁸ Fougeyrollas, P., Cloutier, R., Bergeron, H. et al., (1999). *The Quebec Classification: Disability Creation Process*, INDCP/CSICIDH, Québec

grammes, particularly in the areas of health, employment, education and social services” (art. 26). In other words, we need to rehabilitate society to include persons with disabilities in all policies, so that they may limit and reduce disability and habilitate all professions and politicians - that have impoverished their knowledge and competences on these persons - to know how to do it, respecting the human rights of all.

This transformation of approach to the quality of life of persons with functional diversities, respectful of their human rights, brings on a change of strategy in the development of appropriate policies and support.

It is evident that the task of the States, the professionals, of the whole society is to accompany interventions of care and assistance towards persons with disabilities, with interventions of inclusion, non discrimination and equalization of opportunities. It is necessary that the whole society regains possession of its knowledge and competence, by means of appropriate training based on the respect of human rights, by means of studies and research that support the process of social inclusion, with adequate policies and interventions. The States - the whole society - are responsible for guaranteeing persons with disabilities, social and economic roles that they can obtain, to regain the social visibility and the power that other citizens enjoy. These inclusion policies, give weight to the economic productivity and social care becomes an investment. The more disabilities are reduced and eliminated the more the citizens can contribute to the economic and social development, the more *empowerment*²⁹ policies are developed, the more full citizenship of all the members of society are supported.

In this way we can understand the meaning of art. 1 of the Convention, that introduces a new International Standard in policies addressed to persons with disabilities: *“promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”*.

The philosophical approach to the justice theme

In the development of philosophical and moral schools the theme of justice was widely dealt with. Following we will outline a schematic synthe-

²⁹ The concept of *empowerment* is similar to that of *capability* of Amartya Sen, even if it enriches the contents. See Sen, A. K. ‘Utilitarianism and Welfarism’, *The Journal of Philosophy*, LXXVI (1979), 463-489; *Commodities and Capabilities*. Oxford, 1985; *Development As Freedom*. New York, 1999.

sis, highlighting the principle theories of justice³⁰. Habermas catalogues the theories of justice according to historical development³¹.

He puts metaphysical justice in the first place, that sees in God the justifications of the morals based on justice, in which everything derives from the divine will and from revealed principles and values. They are theories that digress from religious beliefs and are often based on sacred texts, in which the ethical and morals to go by are revealed by divinities. If these principles are respected during life, in the life following earthly death one will benefit of an award corresponding to a beatific life in an otherworldly place (heaven in the Christian tradition) or else one will be punished with torture and punishments and penalties in another place (hell in the same tradition).

These theories of justice were applied to persons with disabilities in various religious contexts, often underlining the fact that the negativity of a condition of functional limitation, foreboding of suffering and pain, corresponds to a sort of privilege, a future award in another life. Moreover this structure highlighted a charitable and welfare vision that, positive in contexts of extreme poverty and abandon, produce an understanding of the pietistic and medicalizing condition of persons with disabilities³².

Post metaphysical moral theories follow the metaphysical theories that can be synthesized in four fundamental schools:

- a) moral realism, based on “intuitive comprehension” or of “ideal vision” of the values;
- b) utilitarianism, which bases its moral norms on the convenience for society to use with the limited resources available to a maximum profit;
- c) metaethic scepticism;
- d) moral functionalism.

Utilitarianism

Utilitarianism, born with Jeremy Bentham in ‘700³³ on the basis of the awareness of the socio-economic imbalance, caused by the English

³⁰ The schematic description of the theories texts taken from the internet or philosophical manuals are used.

³¹ Habermas, J. (2008). *L'inclusione dell'altro. Studi di teoria politica*. Milano, 2008.

³² Let's just think that in the Catholic tradition on the 3rd December, The International Day of Persons with Disabilities is celebrated as the Day for Ill People.

³³ Jeremy Bentham (1748-1832) developed his theory in his work “*Introduction to the principles of moral and legislation*” (1789), (Italian traslation *Introduzione ai principi della morale e della legislazione*, Torino, 1998).

industrial development of the second half of the seventh century, is based on the consideration of the shortage of the resources with respect to the progressive growth of the population. Bentham reformulates the principle of the «utmost happiness for the maximum number of persons» of the Enlightenment philosophers (Cesare Beccaria, Helvetius, Hutcheson). If the moral would like to become a science, it must be based on facts and not abstract values. In fact happiness is nothing but pleasure. Pleasure and pain are quantifiable so that they can be taken on as criteria for acting. Bentham formulates an *algebra morale* that is a quantitative calculation that allows us to know the consequences of acting, quantifying happiness produced, addressing us towards actions that maximize pleasure and minimize pain. Good actions will be therefore the actions that promote happiness not only for single.

Bentham's utilitarian structuring created a philosophical school to which various authors contributed, in particular John Stuart Mills. Maintaining the analysis on an individual level, an agent put in front a choice between a number of alternatives, it will be led to choose whatever minimizes happiness (therefore the utility of him/herself). The analysis, though, can be extended on a general level. In the original formulation, in fact, utility is a cardinal measure (or additive) of happiness; it therefore is aggregated by means of addition operation. It is therefore possible to measure "social well-being", defining it as an addition of the single utilities of the individuals belonging to society. Therefore utility becomes the linchpin of ethical reasoning, and its direct application is that various social states are comparable according to the level of global utility "*The utmost happiness for the maximum number of persons.*" Utilitarianism is therefore a theory of justice according to which it is "right" to carry out the act that, between the alternatives, overall utmost happiness, measures by means of utility.

In these last decades Peter Singer³⁴, an American utilitarian, declared that the use of limited resources must be addressed to collective wellbeing, we should identify who qualifies to benefit from it. It is useful for society to exclude from the beneficiaries the human beings that do not become persons: it is the case of fetuses that present very serious malformations that renders the quality of their life very low, whose birth would bring on a substantial rise in costs of society to let him/her live and an increase in the suffering for the mother and the family and would prevent the

³⁴ Singer P., *Scritti su una vita etica*. Milano 2004; Singer P., *Practical ethics*, Cambridge, 1993 (tr., it., *Etica pratica*. Napoli 1989); Singer P., *La vita come si dovrebbe*. Milano 2003.

mother to conceive another healthy child with a happier life and which would render the parents' life less painful. This structure based on similar motivations and those that the Nazi regime used to justify state euthanasia of persons with disabilities and mental illnesses is impressive. Such a setting is no longer only a theoretical setting, in fact it was taken up again by a group of Danish doctors who theorized (and practiced) euthanasia of those born with spina bifida³⁵; even the Royal college of Obstetricians and Gynaecology in 2006 asked the bioethics commission of Norfolk to be authorized to kill children born with serious "disabilities"³⁶. To this clear violation of human rights some organizations of persons with disabilities and in particular Disabled People's International (DPI), the European Disability Forum and the International Federation for spina bifida and hydrocephalus reacted with various stances³⁷, claiming the safeguarding of the human rights of persons with disabilities, established by articles 1 and 3 of the Declaration of Human Rights and by article 10 of the UN Convention³⁸.

Metaethic Scepticism

The metaethic scepticism starts from the idea that the behaviour of human beings do not base themselves on ethical principles on a social convention. Thomas Hobbes, among the theorists of this philosophical structure, declares that we should accept the laws that should be applied by the sovereign, because life without laws would be "poor, unpleasant, brutal and short" (*Leviatano*, VIII). Therefore what is right is fruit of an agreement, that has no intrinsic value. This moral agnosticism, was developed by David Hume, put moral reality into question. In the

³⁵ See web site of IFSBH (International Federation for spina bifida and hydrocephalus) where are reported both the protocol and association reactions: <http://www.ifglobal.org/en/termination-of-life-groningen-protocol.html>

³⁶ Senior doctors are urging health professionals to consider permitting the euthanasia of seriously disabled newborn babies. The college is arguing for "active euthanasia" to be considered for the overall good of parents, sparing them the emotional burden and financial hardship of bringing up the sickest babies".

³⁷ See *Disabled people speak on the new genetics. DPI Europe position statement on Bioethics and Human Rights*. London, 2000. For the European Disability Forum, who approved two resolutions on the matter, consult the web-site: www.edf-feph.org. Vedi anche Griffo, G. *Bioethic and disability: an human rights issue*. (2001) Report of the Convention Bioethics and disability, organized by the Lanza Foundation, Conegliano Veneto 26 September 2001.

³⁸ Art. 1 of the Declaration of Human rights declares: "All human beings are born free and equal in dignity and rights"; Art. 3 declares: "Everyone has the right to life, liberty and security of person." Art. 10 of the CRPD (Right to life) declares: "States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others".

Treaty on human nature, Hume declares that our moral beliefs derived from our sentiments, that, however, cannot be at the basis of moral considerations based on truth and falsity. In other words, Hume agrees on the fact that we must psychologically accept moral truths despite not having proof that they are moral truths. The theory of presumed justice with this philosophy underlines the fact that fairness depends on what society defines right, on the basis of the laws and decisions. In this theoretical context it is evident that the laws and the decisions are taken by the majority of the society or by who is able to have representation in society. What is lacking in this theoretical context, are the subjects that are scarcely represented by society, such as persons with disabilities who have been for years. Not only, since their voice was not taken into consideration, these subjects, when they were dealt with, were represented by others, such as religious people (nuns, priests, etc.), doctors, or other social figures. This produced, society's approach towards persons with disabilities in the period starting from the thirty year war to the first world war: some spoke on their behalf and decided how to treat persons with disabilities, that were considered as sick, incapable, to be segregated in place far from society.

Rawls' theory of justice and persons with disabilities

The justice theory developed by Rawls³⁹, a philosophical theory based on widely accepted liberal principles, centres its attention on the relationship that is built in a liberal society, based on the free market, between liberal contractors whose interests become balanced in contractual relationships, which are satisfying for both contractors.

With *A Theory of Justice* Rawls tries to overcome the philosophical doctrine of utilitarianism, that is the idea according to which a just society must pursue the greatest well-being possible for the greatest number of people. For Rawls the utilitarian position tends to sacrifice the interests of the minority. The conception of Rawls' justice is based on the idea that all the principal social goods must be distributed equally, equal distribution may occur only if it favours the most disadvantaged.

Rawls uses two themes to support his ideas. With the first theme he opposes his theory to the theory of equal opportunities; The second

³⁹ Rawls, J. *A theory of Justice*. Cambridge, 1971 (translated into Italian by Rawls, J. *Una teoria della giustizia*; edited and revisioned by Sebastiano Maffettone; translation by Ugo Santini; I ed. riv., Milano, 2008).

theme is of social contract. According to Rawls, in a society that is founded on equal opportunities, unequal income is just because it is linked to the skills of each single individual. He does not criticize these inequalities but the undeserved inequalities. To be born rich or poor is not a merit, to be born intelligent or person with disabilities is not a merit, it is only about being luckier or not. Rawls criticizes the theory of equal opportunities because he does not take into account of the inequalities linked to the natural talents of every human being, undeserved inequalities because they are arbitrary. He thinks that an equal distributive justice must take into account the undeserved inequalities and create a system where the less advantaged can obtain the most possible. To create an equal distributive justice, Rawls uses, reinterpreting it the instrument of social contract, already used by the seventeenth century doctrine of natural law. The intuitive theme in favour of the theory of justice as equity is presented by Rawls in the second chapter of *A theory of Justice*; the intuitive theme substantially regards the second principle of the theory, that of difference, that aims at modelling a just distribution of the resources, once guaranteed, with the first principle, the ascription of the equal fundamental freedoms of each one. Freedom and equality are not embedding values, distributive equity aims at making equal, the unequal value of equal freedom. The system of natural freedom lets morally arbitrary endowment transfer and unload with their effects the moral arbitrariness, distributive results. This is incoherent with the aims of a theory of social justice that is concentrated on the value of individual and collective choice. It is not acceptable that political institutions and social practices sanction with their structure and their function the moral arbitrariness of natural and social fate. Even the proposal of liberal equality, centred on equal opportunities, is to be deemed insufficient on the basis of Rawls' intuitive theme; the principle of efficiency is to be substituted with the principle of difference, specifying the interpretation of democratic equality: the priority is given to the point of view of who is most disadvantaged in the distribution of initial, natural and social, endowments. In this way a "democratic fraternity" is expressed, based on an idea of citizenship reciprocity or solidarity. Only in the background of the institutions modelled by the principle of freedom and by the principle of difference, is it possible that a society passes the test of ethic justification for those who have a life to live with others. With the idea of unanimous acceptability we can keep in mind the procedure that gives way to those for whom the scheme of cooperation is

less acceptable: only if acceptance is obtained by those who are more disadvantaged is it possible to continue with the test until reaching those who are most disadvantaged. A just society is therefore a scheme of cooperation which is stable in time and modelled principle based on citizenship reciprocity.

The analytic theme in favour of the two principles of justice falls back on a strictly contractual perspective: the principles of justice of Rawls' conception must be able to be object of unanimous collective choice on behalf of individuals that find themselves in initial situations like original position. So that it is possible to reach a unanimous choice of the principles of justice, it is necessary to keep our interests and our personal and legitimately self-interested preferences, quiet: the original position, with its veil of ignorance, is an expositive efficient artifice that aims at obtaining this. Contingent and particular facts must be neutralized in order to reach the mutual agreement on what is collectively just, and the mutual agreement must depend on the mere rationality of the parties involved in the procedure of convergence; social justice therefore needs the virtue of impersonality (according to Rawls, utilitarian exchange impersonality with impartiality). The veil of ignorance, constraining information on particular facts, makes us evaluate the principles of justice impersonally to regulate cooperation in time. Rawls' theory of bargaining, in the original position, are to exclude falling back onto strategic rationality to determine the results of justice. The parties do not dispose of information in terms of subjective probability, they know they can be anyone in society, but they do not know what probability they have of being in any of the relevant positions in society; Rawls' veil of ignorance is thicker and tighter than that requested by utilitarianism, Rawls' preference deems that it is rational that the parties in the original position choose principles that guarantee them against the risk or the worse results of natural and social lottery. Rawls introduces an analogy with the rule chosen by the maximin: the parties choose the maximum, of the minimum. In the dark of our social destiny it is natural that we choose, that distribution in which the condition of those who are worse is the best. In this way a just society is a society that aims at improving with priority the positions relative to disadvantaged groups in the distribution of primary social goods. The legal doctrine based on the principles of the social contract as a theory of justice presents itself as a proposal of normative political theory centred on democratic egalitarianism. Diverse to utilitarianism that is a comprehensive moral doctrine,

that of Rawls is a perspective based on fundamental political values of a just society.

Criticism to Rawls' setting with regards persons with disabilities came from Eva Kittay and Martha Nussbaum⁴⁰. The main objection regards persons who cannot represent themselves who in Rawls' model of contractual society are not represented.

Moreover in the contractual vision, the vision of the different conditions of the contractors of a contract, and the context in which the contract is carried out, is lost, that for persons with disabilities means in both cases conditions of discrimination and lack of equal opportunities that render them particularly weak contractually. In fact if conditions of equal opportunities, overcoming of obstacles, barriers and elimination of discrimination are not established, persons prove to be penalized in any contractual action. Let us think, for example, of the objection of the companies on the obligation to take on the quota of workers with disabilities based on the costs of adjustment of places and of the work equipment and on the presumed non productivity of persons with disabilities.

The moral approach and action in favour of persons with disabilities

There is a weave that has not yet been investigated, between the philosophical theories on morality and ethics and how these influence behaviors towards persons with disabilities, the treatments they are subjected to, the policies and the programmes that are addressed to these persons. This theme should be studied further because, in time, the ideologies mentioned above on the condition of persons with disabilities and the practical solutions offered to them in the various epochs and in the various socio-economic-cultural contexts, are often intertwined.

This study, that we hope can be fulfilled by the Disability Studies, should bring out the elements of compatibility and contradiction between political approaches and moral theories. In fact the structure that produced segregating solutions, of exclusion from society, of specialisms to which persons with disabilities should be entrusted, produced on one hand

⁴⁰ Kittay, (1999) *E. Love's Labor: Essays on Women, Equality, and Dependency*, Routledge (Thinking Gender Series) 1999; *The Subject of Care* (2003) (edited with Ellen Feder), Rowman and Littlefield 2003; *Equality, Dignity and Disability*, (2005) in Mary Ann Lyons and Fionnuala Waldron (eds.) (2005). Nussbaum, M. (2002). 'Capabilities and the Mentally Dis-abled: Justice for Mentally Disabled Citizens' in *The Tanner Lectures: Beyond the Social Contract: Toward Global Justice*. Delivered at Australian National University, Canberra, 2002.

disrespectful treatment of human rights (let's just think about the institutions where - and until now - persons with disabilities⁴¹ are still segregated, which a seminar of the United Nations has explicitly branded as a form of torture and inhuman and degrading treatment⁴²); on the other hand policies and intervention that often have further stigmatized persons with disabilities in a negative manner. Often these policies and treatments were justified by moral and ethical motivations, strongly contradicting with the real situation of these persons, that were considered persons holders of other rights if not those based on bursts of charity, offers in segregating contexts. The result of these interventions have often produced a condition of invisible citizens, relegated in families or closed up special places. Citizens that could be treated differently just because they are considered inferior⁴³ persons.

Models of disability and the ideas of justice linked to them

An element that has been neglected by the literature dedicated to persons with disabilities (even in *disability studies*) were the theories of justice subtended to different models of disability. This has caused great difficulty in coherently translating the practical consequences of those models. Therefore we can detect a sort schizophrenia that accompanies the acceptance of the new theories of disability, without there being consequent profound changes in the behaviors of professionals and politicians that deal with these persons.

In reality every model of disability produced a different idea of justice for persons with disabilities, that influenced the policies that were put into the field and the competences that society has developed to realize them.

The *model of values*, witnessed in the Greek and Roman society (but probably present in other “historical” societies, probably an inheritance

⁴¹ A European research in 2006 has surveyed that about 500.000 persons with disabilities shut in 2.500 big institutions in the 25 member states (see web-site: www.community-living.info). The report of a study carried out in the EU Member States and Turkey, *De-institutionalisation and community living: outcomes and costs* (2007), found that nearly 1.2 million disabled children and adults lived in long-stay residential institutions. See <http://www.enil.eu/elib/app/webroot/files/2009-09-21%20Expert%20Group%20Report%20Final%20draft.pdf>.

⁴² Office of the High Commissioner for Human Rights (2007). Expert seminar on freedom from torture and ill treatment and persons with disabilities. Geneva, 11 December 2007, United Nations Office Geneva.

⁴³ Goffman, E. (1990) *Stigma: Notes On The Management of Spoiled Identity*. London, 1990. Viganò, F. (2010) *Disabilità e teoria della giustizia in Paradoxa. Etica della condizione umana*. A cura di Pessina A. Milano, 2010.

of practices born in the human prehistoric society), assigned to persons with disabilities, values so negative that it decided to abandon them because they would have “polluted” warlike societies such as Sparta, based on physical strength. This model corresponds to an idea of justice that in modernity led to the Nazi practices of active euthanasia (recently resumed by unsuspecting professional colleagues) or in a theory of utilitarian justice that considered persons with disabilities who asked for intensive support a weight, expensive for the family and for society, justify suppression. Such theories (and sometimes hidden practices) risk affecting a wider sector of the population (those affected by rare diseases, those born prematurely, persons in a vegetative state, etc.). These theories and practices foretell a series of consequences that were unthinkable till yesterday. For example the uselessness of the progress of biomedical science, given that increasing capacities of care and survival of the persons, of these developments and treatments would not want to have some categories of predefined persons by society benefit from it or only those who have the economic means to pay for them.

The *charitable model* of disability, whose foundation we saw in the medieval period but that survived in various social and cultural contexts up until today, interpreted the condition of persons with disabilities in a context of poverty, of family neglect, social fragility. The idea of justice that is subordinate to this model of disability on one hand refers to an ultra-worldly divine justice, on the other it constituted charitable institutions, often receiving, that hosted these persons. To the initial charitable approach, a segregation practice of social exclusion and centered on the same institutions, that affected the persons hosted there with a heavy negative social stigma, making them socially undesirable is overlapped.

The *productivist/performance model* introduced by the industrial revolution, on the basis of the idea of a person who is able to work, excluded by principle the “sick” and “incapable” persons, is always and however considered unproductive. The idea of justice for persons with disabilities of this model reinforced the choice of segregating persons in special places, separate from society, because they were considered unable to live in society and denied them even only the hypothesis of being considered workers. Today the still strong cultural resistance of the enterprises to accept the quota system of persons employed to be reserved for persons with disabilities is based on this prejudice. Fortunately in these last years the evolution of support practices for work inclusion

brought forth practices that show that the right person, with adequate competence and appropriate support, can work profitably in his/her work place suited to his/her capacities.

The *medical model* of disability, evaluating persons with disabilities as sick persons to be cured, fortified by medical practices that treat these persons with medical interventions until they are cured. This practice corresponds to the interventions that are called of rehabilitation, of recovery of the lost functionality. In reality medical treatments for many persons with disabilities can often only stabilize the condition of handicap, rendering it chronic: in this case the medical treatments should be proportioned to the real benefit, therefore instead of supplying intensive rehabilitative treatments, they should supply maintenance treatments for limited periods. Unfortunately the rehabilitative medical practices contemplate approaches based prevalently on intensive treatments, because it is the medical approach that cures the person. It is this approach that has often relegated persons with disabilities for their whole lives in rehabilitative-medical institutions, because these persons were considered sick people to be cured. In this case, since to be cured the persons have to rest and be treated in specialized places (hospitals and clinics) often separated from society, the destiny of tens of thousands of persons with disabilities was to be shut for their whole lives in institutions. It is not by chance that the criticism of the medical model of disability starts from the acknowledgement that the competences of the doctors are exhausted by the appropriate medical treatment and do not cover other aspects of the lives of equally important people.

Moreover, as the CRPD underlines in art. 26⁴⁴, habilitation services should be offered for the chronic conditions (physical, sensorial, mental or intellectual), that instead of proposing an objective to themselves –

⁴⁴ Article 26 - Habilitation and rehabilitation:

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes: (a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths; (b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.
2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.
3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

often unfeasible – of cure, of determined conditions, of functional limitations, should construct the empowerment of the persons, of the capacity starting from the characteristics of the persons. In other words for a paraplegic person in a wheelchair, instead of proposing rehabilitative models to them which have the objective of recovering their erect posture, with performance that are often far from the original ones, it would be more opportune to adequately support the habilitation of living in a wheelchair.

It is evident that the idea of justice linked to this model proposed solutions, in time, which were prevalently medical and that other than being not very effective for the persons with permanent functional limitations, they are today very expensive, deducting resources to other forms of support, often more appropriate. Even for these permanent and invalidating diseases, once a stabilizing intervention is defined, the medical role becomes that of counselor, leaving the support interventions for the rights to education, work, independent living, etc. to other competences.

The *welfare model* of disability, mixing the elements of the various models expressed above, defines persons with disabilities as subjects that can benefit only from various forms of welfare, because they are unable to work, permanently sick, fragile subjects, subjects incapable of living in society. This model, in its liberal version defines persons with disabilities “those who are behind”. It is a model that is based on a tautological thesis, because on one hand it recognizes, by assumption, the incapacity of persons with disabilities to live in society, on the other, just because they are recipients only of welfare solutions, these persons are impoverished in their individual and social capacity. The idea of justice underlying this setting is that these persons must enjoy support from the state only in the period of economic development, when there is a surplus of resources. Otherwise they are considered as an economic weight (and not only) for society. The contradictory element of this idea of justice is that the welfare policies always and however result as a non productive economic weight, therefore – mainly in these last years – they are always more held up as social parasites. The recent media campaign against false invalids, that is those who benefit from welfare interventions in an unauthorized way, in reality, it hides the idea that all the persons with disabilities are an untenable weight for economic competitiveness. This vision forgets that the condition of disability touches an increasing number of persons for aging processes, of growth of the capacities to improve the

condition of life and the survival of persons that only a few years ago had very low life⁴⁵.

The *compensation model* of disability was born following the requests of safeguarding of workers injured on the workplace or following the request of compensation of the 8,5 million veterans that had fought in the first world war and had come back to their homeland injured and/or with permanent functional limitations. The need to evaluate the level of damage suffered by these persons to compensate them with corresponding compensation, gave birth to – first within insurance practices, then broadened to the whole system of verification linked to benefits foreseen by welfare – the system of parameters and tables of evaluation of invalidity. In fact, constructed according to the value accredited to an anatomical loss or an acquired disease, these systems of evaluation have contributed in stigmatizing, with percentage evaluations the levels of invalidity, persons with disabilities. The idea of justice that is behind this approach is based on the recognition of a damage suffered in the exercising of a task that is socially recognized (working for a company, combating for their homeland), with the aim of assigning to the person who suffered damages a monetary compensation corresponding to the seriousness of the damage suffered. This setting further contributed to stigmatize the condition of persons with disabilities, mainly when the checking systems were used also to evaluate the assigning of the welfare benefits: a person evaluated with a 100% invalidity was (and still is) evaluated as not placeable, to be inserted in the rehabilitative-welfare circuit. This approach reduces the person to a characteristic, the functional limitation, losing sight of the person's globalism.

All these models of disability are intertwined, they combine, producing a negative vision of the condition of persons with disabilities, to which it is subjectively attributed – for their medical condition and social fragility – the responsibility of not being able to be part of society. It is not by chance when – notwithstanding all the stigmatizations to which they are subjected – some persons with disabilities manage to live a full life, does a further negative element emerge, produced by the media system. These persons inserted in society become superior, extraordinary persons, who only for their heroicalness become part of social life, implicitly bringing forth, the fact that ordinarily these persons are not able to achieve full social inclusion.

⁴⁵ Let us think about persons with Down's syndrome or quadriplegics due to spine injuries.

In the last decades models of disability were elaborated that highlighted the responsibility of society for persons' condition of disability.

The first example is the *social model* of disability⁴⁶. Born in the United Kingdom in the 70's of last century then found wide diffusion in the Anglo Saxon world progressively influencing all countries. This model starts from the criticism of the medical model of disability, highlighting the responsibility of society in disabling the persons who have needs to move themselves, direct themselves, communicate, relate in a different way with members of society. In this way the obstacles and barriers that persons with disabilities face daily and that are the result of society's forgetfulness with respect to persons that have specific characteristics. The idea of justice that accompanies this vision demands that the states, the society in all its structures removes the obstacles and barriers that prevent the participation of persons with disabilities and the equality of conditions. It is a change of vision that produced great changes in the vision of the condition of persons with disabilities. The limits of this approach is that the construction had some ideological components opposed to the medical model of disability, and was therefore constructed negatively, often putting in second place important elements of evaluation. In general this model has strongly influenced persons with disabilities and their organizations, strengthening them in their commitment to construct an inclusive society, where all persons can live in equal opportunities⁴⁷.

On the basis of the debate deriving from this new approach, the WHO elaborated the ICIDH (1980)⁴⁸, the first model of disability still anchored to a medical determinisms, and, successively on the basis of the Standard Rules, the ICF (2001)⁴⁹, tried to overcome the extremisms of the social model, introducing the *biopsychosocial model* of disability. In reality the ICF is on one hand an nosography applicable to all human beings to measure their health condition and on the other a model of disability. We will only deal with this aspect in this article. Underlining the fact that disability is an umbrella word that includes many elements connected among themselves, this model highlights the relationship that exists

⁴⁶ Oliver, M. (1990), *Politics of Disablement*. London, 1990; Oliver, M. (1996), *Understanding disability: From theory to practice*. New York-Basingstoke, 1996.

⁴⁷ This approach influenced even the United Nations which approved the Standard Rules for the equalization of opportunities for disabled persons in 1993. See web site <http://www.un.org/esa/socdev/enable/disre00.htm>.

⁴⁸ International Classification of impairment, disability and handicap.

⁴⁹ International classification of functioning, disability and health. See web site <http://www.who.int/classifications/icf/en/>

between the conditions of health of persons and the contextual elements (prevalently environmental) that can favour or hinder their social participation. According to the ICF the conditions of health of persons (that may alter the body structure and functions) in presence of the social and environmental conditions, that can produce obstacles and facilitate persons in carrying out individual and social activities, create conditions that favour or limit participation in society. This model, that has the ambition of unifying the medical model and the social one adding individual psychological factors (even if still in a slightly developed manner), has at its basis a model of justice that even it, highlights society's responsibility towards the condition of disability, but registers them in a technical context in which the role of the health area still prevails. Not by chance that often there are inappropriate applications that limit them to using only the health part of the check-list. From another point of view this limit has also the merit of being an effective instrument of change of the points of view of the health and social operators, grazed in their convictions by the social model of disability, not very well known in professional environments.

On the whole we can say that the idea of justice on which the models of disability previous to the social model are based, is still the prevailing one, both in the policy field addressed towards persons with disabilities, as well as the professional field that deals with persons with disabilities. In fact notwithstanding in the last years the awareness of the society's responsibilities for the condition of disability, the policies addressed to persons with disabilities in the world centered on their attention still prevalently to health-rehabilitative, welfare, compensational, protective, has grown. It is not by chance that these policies are often defined as safety policies or social protection policies. The same approach – even if with dynamic elements in the last ten years - influenced the professionals that deal with persons with disabilities in which often training curricula based on medical and/or welfare matters prevail.

The idea of justice linked to the disability model based on the respect of human rights

The CRPD, even if not in an explicit manner, introduces a new model of disability based on the respect of human rights. This model re-elaborates the social model, framing it in a universalistic perspective, based on the approach centered on rights. This model, already widely explicit in the

previous chapters, revolutionizes the economic, political and social behaviors linked to persons with disabilities.

In fact the CRPD shifts the points of view from which to start, to answer to the rights of persons with disabilities. The most profound transformations: from the interpretation of the condition of disability that starts from the pathologies and passes on to attention towards social relationships; from subjective conditions of persons that is concentrated on social and environmental constraints; from the acknowledgement of the needs we arrive to the acknowledgement of rights; from the society that disables persons to the society that enables.

It is evident that this cultural approach imposes a profound change in the interpretation of the condition of persons with disabilities and a consequent transformation of what needs to be done in order to guarantee the respect of their human rights.

On the basis of the CRPD in fact there is a new justice model. It is no longer the metaphysical justice, neither the one of simple cure and assistance, nor the exclusively compensational one, or protective one. The new paradigm, based on equality and non-discrimination, on the enhancement of human diversities, on the empowerment of discriminated and disadvantaged persons, on services and benefits aimed at the inclusion of marginalized and excluded subjects.

In other words from a welfare based on social protection it will be necessary to get to a welfare based on social inclusion. This means that the evaluation of the capacity of persons with disabilities should not be limited to percentage parameters, but concentrate on of the real conditions and potentiality of people; the intervention should not be generically welfare, but intervene in removing barriers and obstacles and to support persons in the processes of autonomy and social inclusion; the policies must address and guarantee the support of persons with disabilities not only in the health and welfare area, but in the area of labour, education, transport, constructed areas, tourism, free time and so on. .

That of the use of the resources in the particularly delicate field of this transformation. During these last months, due to the economic-financial crisis that has assailed Western countries, the resources are addressed prevalently to support the market and the bank system. This brought on a reduction of the funds destined to social expenses, even to maintain the competitiveness of emerging countries – as has been underlined by various governments.

The justice model linked to the CRPD profoundly changes the political

interpretation of our condition. If before we were fragile and vulnerable persons, due to our condition of functional handicap, the CRPD gives us back the entitlement of rights as citizens, to whom society must give answers in terms of equality of opportunities and non discrimination. In fact the average vision of society relegated us out of ordinary policies, as a person to be taken care of and assisted, to whom to destine society's added resources. This setting saw persons with disabilities beneficiaries of welfare and health interventions. And just this logic of eligibility verification of the persons, through the procedure of assessment of the condition of handicap, based on medical parameters, excluded persons from political benefits of policies addressed to the entire population. In this way the system maintained persons with disabilities to the outskirts of society which activated itself in allocated resources only in the presence of a period of economical growth.

The CRPD changes at the root of this vision: first of all it considers persons with disabilities part of society and therefore beneficiaries of all the policies and programmes. This vision, respective of human rights, which all citizens are entitled to, obliges the states to include persons with disabilities in all the measures, legislations and policies. This means that the resources, that were previously destined to first class citizens, to which were added, in prosperous times, resources for persons with disabilities (and other social sections "vulnerable"), must be used for all citizens. This cultural and political revolution had not yet been understood and digested by governments, by the political forces, by the citizens and often, by the same persons with disabilities and their associations. In this frame the typologies of the services and benefits should be changed. From interventions addressed to custody and assistance there is need to pass onto the support for community life, from institutionalization policies to services for independent living (art. 19 of the CRPD), from prescription of devices on the basis of pathologies to allocation of assistive devices on the basis of the right to personal mobility and autonomy (art. 20 of the CRPD).

In other words, persons with disabilities from assisted and social burdens, become full citizens, to whom the general policies are addressed. The innovative approach of this direction become the policies of mainstreaming. "Mainly, citizens with disabilities pass from the role of assisted persons to that of taxpayers. The gathering of data and statistics on the impact of inclusion policies must be based on new data: *"identify and remove the barriers that persons with disabilities face when exercis-*

ing their rights" (art. 31 of the CRPD). They must therefore elaborate new researches, based on the definition of disability introduced by the CRPD like for example, the level of accessibility in a city, the discrimination present in the access of goods and services, the obstacles and barriers that prevent full participation and inclusion in the world of education, work, tourism and free time...

The new exigencies that the UN Convention demands to define a new theory of justice for persons with disabilities

This new vision of justice demands a new theoretical reflection among the principles of human rights contained in art. 3 and 5 of the CRPD and the actions to obtain justice for persons with disabilities. The relationship between principles of justice and the principles of human rights requires in fact a new elaboration, capable of identifying strategies for inclusion, technical and practical solutions to guarantee the respect of the human rights of persons with disabilities.

The old model of social protection policies has impoverished society of knowledge and learning, that today should be enriched and often reformulated on the basis of policies respectful of the human rights introduced by the Convention. In fact the processes of exclusion and marginalization are based on simple choices of exclusion, segregation and institutionalization. Inclusion on the other hand requires new attention on the identification of appropriate policies, capable of favouring access and enjoyment of human rights for persons with disabilities, the definition of services and adequate support to favour the participation in all areas social, technical and technological solutions to remove barriers and obstacles. In this area research on inclusion, as underlined by the European project EuRade, promoted by the *European Disability Forum* and the University of Leeds⁵⁰ is essential. In fact in the final report of the project it is highlighted that in the area of disability from the traditional research on medical prevention of diseases (at which until yesterday European research programmes had stopped) we must pass onto the applied research for the removal of obstacles and barriers, technologies addressed to autonomy and self-determination, policies for the support of full participation in the social life of persons with disabilities. To construct an inclusive development is this century's great challenge, for which it is necessary to have new knowledge and new competences,

⁵⁰ See the final report of the project and the policy statement on the web-site: www.eurade.eu/

political, social and professional. It is necessary to support these studies and researches that bring forth the contribution that persons with disabilities can give to society both in economic terms and cultural instruments that are able to facilitate the social inclusion of social sectors that are always extended to excluded and marginalized people.

Some useful elements for the new approach to disability come from Amartia Sen's reflection, that has put attention on the concept of capability⁵¹ also applied to persons with disabilities (capability is an activity that is included in the concept of empowerment mentioned above) or the heuristic instruments diverse in definitions from the intervention plans of identified for persons with intellectual disability, as narrative medicine⁵² proposes, overcoming an exclusively medical approach.

A new justice perspective for persons with disabilities and the role of the ICF

The CRPD introduced new political and social approaches to justice for persons with disabilities (mainstreaming of the policies, social inclusion, equalization of opportunities, respect of human rights). In this new international reference standard for policies and technical approaches, the identification of the contribution of the ICF to the process of change that will assail the whole world in the next decades proved very important.

⁵¹ Sen, A. (1992). *Inequality Reexamined*. Cambridge, 1992; Sen, A. (1999). *Development As Freedom*. New York, 1999; Sen, A. (2005). "Human Rights and Capabilities." *Journal of Human Development* 6, no. 2: 151-166; Sen, A. (1979) 'Utilitarianism and Welfarism', *The Journal of Philosophy*, LXXVI (1979), 463-489; Sen, A. (1985). *Commodities and Capabilities*. Oxford, 1985; Sen, A. (1999). *Development As Freedom*. New York, 1999. See too Nussbaum, M. C. and Sen, A. (1993). "The Quality of Life" Oxford, 1993; Nussbaum, M. C. 2003. "Capabilities as Fundamental Entitlements: Sen and Social Justice." *Feminist Economics* 9(2/3): 33-59; Nussbaum, M. C. (2000) *Women and Human Development: The Capabilities Approach*. Cambridge, 2000.

⁵² Ruggerini, C., Griffo G, Manzotti S. (2009). Empowerment, famiglie, persone con disabilità intellettiva: modi nuovi di "prendersi cura". *Servizi Sociali*. Numero 2: 45- 48, 2009; Ruggerini C., Vicini S., Manzotti S., Griffo G. (2010). La "Cura della Comunità" per la promozione della salute: il ruolo dei documenti clinici. Il caso della disabilità intellettiva e delle difficoltà di apprendimento. in GB Camerini e E Sechi (Eds.), *Riabilitazione psicosociale dell'infanzia e nell'adolescenza. Principi ed esperienze*. Repubblica di San Marino, 2010; Ruggerini C., Dalla Vecchia A.M., Pupulin E., Vicini S., Vezzosi F. (2008). *Medicina basata sulle narrazioni: le prospettive di applicazione alla condizione di disabilità*. In Vianello R., Mariotti M., Serra M. (a cura di): *Esperienze e ricerche sull'integrazione scolastica e sociale*. Azzano San Paolo (BG), 2008, Vol II pg 43-49; Ruggerini C., Vezzosi F., Solmi A., Manzotti S. (2008). *Narrative Medicine in Genetic Syndrome with Intellectual Disability*. In A Verri (Ed.), *Life Span Development in Genetic Disorders - Behavioral and Neurobiological Aspects*. New York, 2008; Ruggerini C., Vezzosi F, Dalla Vecchia A (2008). *Prendersi cura della disabilità intellettiva - Coordinate OMS, buone prassi, storie di vita -*, Trento, 2008. Manzotti S., Ruggerini C. (2007). Assessment of the care system for intellectual disabled in Japan on WHO evaluation models: a narrative based approach. 13th ESCAP International Congress Bridging the Gaps, Firenze, 25-29 agosto 2007 (Poster)

The role of the ICF to support the respect of the human rights of persons with disabilities is to influence the professional figures that deal with persons with disabilities. Approved by the WHO 2001 assembly, the ICF is proving to be an important instrument for the cultural training of disability operators or technicians. In fact this instrument manages to influence both the medical profession as well as the social one, favouring a change of perspective and approach to the theme of disability.

Many experiments are being done in various countries to use the ICF as a basic technical instrument in public service systems linked to disability⁵³. Countries like Slovenia, Italy⁵⁴, Spain, Ireland, Romania, Sweden, Switzerland, the Czech Republic, Germany, Portugal started, in socio-health contexts linked to disability, and still experimentally, the use of the ICF as a basic instrument to evaluate the condition of persons with disabilities and to answer to their needs appropriately.

The ICF therefore is proving to be an important instrument to change the way in which the public services and the operators of the various services interpret the condition of persons with disabilities. The ICF in fact introduces a disability model which is useful to change the condition of persons with disabilities, allows a better evaluation of the capacity and of the obstacles that a person with disabilities comes across in a non inclusive society, identifying the facilitators for carrying out the activities; allows the gathering of more appropriate and correct information on persons with disabilities, allows for an evaluation of the appropriateness and efficiency of some service interventions; it opens new fields for research both in clinical evaluation and bio-psycho-social evaluation.

Respect of Human Rights for persons with disabilities as a new perspective of justice

The vision on the condition of persons with disabilities is in evolution.

The approach based on the respect of human rights, introduced by the CRPD, defines a new reference framework to the policies, the services, the treatments towards persons with disabilities, that requires profound cultural, social, economic and political transformations. This conceptual

⁵³ See http://www.reteclassificazioni.it/portal_main2.php?portal_view=links

⁵⁴ *The ICF for monitoring the UN Convention on the rights of persons with disabilities*. By Griffo G, Leonardi M, Martinuzzi A, Francescutti C, Kosic V, Barbieri PV. In *Disability and rehabilitation*, 2009.

revolution highlights society's responsibility and the government's responsibility on the creation and maintenance of conditions of disability for 650 million persons, demands a profound afterthought of the idea of justice that subtends the policies and interventions in favour of these citizens. This idea of justice is linked to the removal of obstacles, barriers and discriminations that prevent the full enjoyment of human rights and fundamental freedoms (art. 1 of the CRPD). In the near future the States that will ratify the CRPD (more than 90 at the moment) will have to adopt a support system for obtaining rights, on the basis of equal respect as the other citizens, promoting full social inclusion and the policies of mainstreaming in all areas. This will cause great changes in the distribution of the resources, that will have to take, even these persons, into account. In order to construct these new policies and realize the new idea of justice linked to the application of the CRPD, we will need to elaborate new knowledge, new awareness, new cultural approaches. In this direction the role of persons with disabilities will remain irreplaceable and, in case they cannot represent themselves, that of their families. The international slogan "Nothing about us without us" represents, at the same time, a work method, a form of realization of inclusion. The same CRPD affirms this (art. 4 comma 3): *"In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations."* The movement of persons with disabilities, as it fought in the last 40 years to claim a diverse interpretation of the condition of persons with disabilities, obtaining the result of making their rights known by the United Nations, must continue its battle for the respect and application of these rights, fielding its knowledge, its experience, its many best practices that show that this objective is realizable in the world.

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This training toolkit is focused on a model of disability based on a human rights approach, which was introduced by the United Nations Convention on the Rights of People with Disabilities in 2006.

Respect for inherent dignity, monitoring and defence of human rights and a transformation of policies, mainstreaming disability issues, are key aspects for a new economic, social and cultural approach to the condition of persons with disabilities.

